

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

76-1182

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-1182

UNITED STATES OF AMERICA,

Appellee.

v.

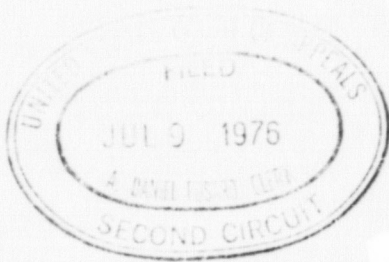
JANET TERRI,

Defendant-Appellant.

Appeal from a Judgment of Conviction in the
United States District Court for the
Eastern District of New York

APPENDIX ON BEHALF OF APPELLANT JANET TERRI

VOL. 1 pp. 1a - 26¹a



WILLIAM G. MULLIGAN
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Bar Ass'n Steno Serv. (Appeals Section) 212-687-0384

PAGINATION AS IN ORIGINAL COPY

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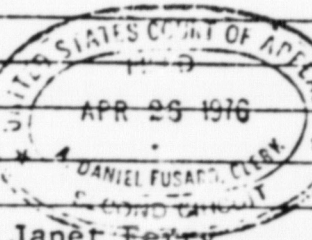
75CR 488

PLATT, J.

75-976

DOCKET

TITLE OF CASE		ATTORNEY
THE UNITED STATES		For U.S. KIMELMAN
WILLIAM J. JOYCE,		for deft. BOVELL:
X DONALD WALSH,		William H. Sperling
EDWARD J. BOYLE,		125-10 Queens Blvd.
THOMAS M. BURNS,		Kew Gardens, NY. 263-7687
JAMES GRIMSLEY,		for deft. SCHOENLEY
X LEONARD NITTI,		Peter Passalacqua
X JANET TERRI aka Janet Terry		342 Court St., Bklyn, NY.
ROBERT SCHOENLY,		852-2634
PETER AREITER, X JOHN FREUDIGER		For Defendants: GRIMSLEY
X LOUIS BOVELL, MORTON HANAN		Court apptd counsel:
ft of goods in i.c.c.		Charles P. Murphy, O'Brien
		250 W. 57th Street N.Y.C.
		10019--586-3830



ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine, (Nitti)	2500 00	4-9-76	Notice of Appeal/William	5	-
Clerk, fine Bovell	4000 00	4-12-76	Paul to Tison Jr Joyce	-	5
Witness, "Walsh	10000 00				
Witness, "Terri	10000 00				
Attorney, "Joyce	10000 00				
Commissioner's Court,					
Witness,					

DATE	PROCEEDINGS
6-16-75	Before JUDD, J - Indictment filed.
6/20/75	Before PLATT, J.- Case called- Defts and counsel present. Defts arraigned and each enter pleas of not guilty- bail set at \$5,000.00 P.R. Bond for: defts Burns, Nitti and Schoenly- case adjd to 7/18/75 to set trial date- bail contd as to all defts
6/20/75	Notice of appearance filed (GRIMSLEY)
6-27-75	By PLATT, J - Order filed appointg counsel for deft BOVELL.
6-27-75	By PLATT, J - Order filed apptg counsel for deft SCHOENLEY.
7-3-75	Before PLATT, J - case called - deft FERRARI & counsel present - deft arraigned and after being advised of her rights enters a plea of not guilty; adjd to 7-18-75-Bail set at \$5000 P.R.B. Deft WALSH arraigned and after being advised of his rights enters a plea of not

DATE	PROCEEDINGS
7/1/75	Before PLATT, J. - Case called - Motion to admit atty to practice for this case-decision reserved- Motion to permit Gustave Newman as N.Y. counsel to represent atty Voncent Verdiramo- motion granted
7/8/75	Notice of motion for inspection, bill of particulars, etc. filed ret. 7/18/75 (WALSH, TERRI)
7/11/75	75 M 1096, 75 M 1097, 75 M 1098, 75 M 1099, 75 M 1100, 75 M 1101, 75 M 1103, 75 M 1104, 75 M 1135, 75 M 1136, 75 M 1137 are inserted in C
7-15-75	Notice of Motion filed, ret. July 18, 1975, for Bill of Particulars, Inspection (deft Bovell)
7/16/75	Govt's bills of particulars(2), and response to motion by deft Walsh ^{Schoenly} filed
7/17/75	Notice of readiness for trial filed
7/17/75	Govt's response to imnibus motion of deft Bovell filed filed
7/18/75	Notice of motion for bill of particulars filed ret. 7/25/75 (FREUDIGER)
7-18-75	Before PLATT, J - case called - defts motion for Discovery withdrawn (Walsh); Motion for Discovery (defts Bovell & Joyce) adjd without date.
7-18-75	Before PLATT, J - case called - defts & attys present - defts BOYLE, BURNS, NITTI, SCHOENLY, AREITER arraigned and after being advised of their rights by the court enters pleas of Guilty as follows: Boyle, plea of guilty to count 2; deft Burns, Nitti, Schoenly and Areiter all enter pleas of guilty to count 1; sentences adjd without date - adjd to Oct. 13, 1975 to set a date for trial as to the remaining defts.
9-23-75	Before PLATT, J - case called - Charles Murphy relieved as counsel for deft GRIMSLEY - Thomas O'Brien appointed as counsel for the deft - set down for Oct. 3, 1975 to set a trial date.
9-25-75	By PLATT, J - Order filed apptg counsel for deft Donald Walsh (signed by Judge Platt on July 3, 1975 but forwarded for filing 9-26-75)
10-3-75	Before PLATT, J - case called - adjd to Oct. 24, 1975 @10:00 am for trial.
10-24-75	Before PLATT, J - case called - defts & counsels present - adjd to 1-19-76 for trial
1-6-76	Before PLATT, J - case called - motion for investigator-no opposition motion granted. (John Freudiger)
1/9/76	By PLATT, J. - Order filed appointing counsel (GRIMSLEY) (order in 75CR97)
1-9-76	Before PLATT, J - case called - deft Grimsley & counsel TO'Brien present - deft arraigned and enters a plea of not guilty - bail contd.

BEST COPY AVAILABLE

DATE

PROCEEDINGS

- 1-19-76 Before PLATT, J - case called - trial ordered and begun - Jurors selected and sworn - Trial contd to Jan. 20, 1976.
- 1-20-76 Before PLATT, J - case called - trial resumed - Trial contd to Jan. 21, 1976.
- 1-21-76 Before PLATT, J - Case called. Trial resumed. Trial continued to 1-22-76
- 1/22/76 Before PLATT, J. - Case called- Trial resumed- Deft Freudiger's Motion to Suppress-Motion argued-Motion denied- hearing concluded-Trial resumed-Trial cont'd to 1/26/76
- 1/23/76 By PLATT, J. - Order dated 1/17/76 filed appointing counsel (ATTY-PAUL E. WARDURG)
- 1/26/76 Before PLATT, J. - Case called- defts and counsel present- Trial resumed- deft Joyce, Walsh, Grimsley, Ferry and Bovell motion to suppress denied- contd to 1/27/76
- 1/26/76 SUPERSEDING INFORMATION FILED (JOHN FREUDIGER and MORTON HANAN).
- 1/26/76 Before PLATT, J. - Case called- defts Freudiger and Hanan after being advised of their rights by the court and on their own behalf enter plea of guilty-to the superseding information-bail contd- sentence adjd with date
- ~~1/26/76 Notice of appearance filed (RMA)~~
- 1/27/76 Before PLATT, J. - Case called- defts and counsel present- trial resumed- trial contd to 1/28/76
- 1/27/76 Voucher for expert services filed
- 1-28-76 Before PLATT, J - case called - trial resumed - Each deft renews motion to dismiss denied as to each deft - trial contd to 1-29-76.
- 1-29-76 7 volumes of stenographers transcripts filed (pgs 1 to 1442)
- 1-29-76 By Platt, J - Order of sustenance filed.
- 1-29-76 Before PLATT, J - case called - trial resumed - Jury returns with a verdict of guilty as to counts 1 and 2 - for defts JOYCE, WALSH, TERRI, BOVELL & not guilty on count 1 as to deft GRIMSLEY and guilty on count 2 as to deft GRIMSLEY - sentences adjd without date - bail contd as to each deft - deft WALSH to make motions 2-20-76 at 11:30 am - all other defts to make motions on sentence date - Jury discharged - trial concluded.
- 2-3-76 Voucher for compensation of expert services filed.
- 2-4-76 Voucher for Expert Services filed (Anthony Spiesman)

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PROCEEDINGS

- 2-11-76 Stenographers transcript dated Jan 29, 1976 filed
- 3-10-76 Voucher for Expert Services filed (Freudiger)
- 3-26-76 Before PLATT, J - case called - deft Nitti & counsel A. Nastre present - deft is sentenced to imprisonment for 3 years - execution of sentence is suspended and deft is placed on probation for 3 years. under 18:5010(a). deft to pay a fine in the sum of \$2,500. Fine to be paid during the probation period.
- 3-26-76 Judgment & Order of probation filed - certified copies to Probation (NITTI)
- 2-76 Letter filed dated 3-30-76 from counsel T.O'Brien requesting sentence date be adjd to April 23, 1976 as to deft Grimsley.
- 4-9-76 Before PLATT, J - case called - defts FREUDIGER, WALSH, JOYCE, TERRI & BOVELL present with attys - Deft FREUDIGER sentenced under 18:3651 to imprisonment for 1 year - to be confined for 6 months and execution of remainder of sentence is suspended and the deft is placed on probation (on superseding information) for 3 years. On motion of AUSA Kimelman the indictment is dismissed.
- 4-9-76 Judgment and Order of probation filed - certified copies to Probation (FREUDIGER)
- 4-9-76 By PLATT, J - Order of Dismissal filed (FREUDIGER)
- 4-9-76 Before PLATT, J - Deft ^(et. 2) TERRI & ^(et. 1) BOVELL are sentenced to imprisonment (xxx) for 3 years under 18:3651 - to serve 6 months and execution of balance of the sentence is suspended as to each deft and defts are placed on probation for 3 years. Deft TERRI is fined the sum of \$5,000 on count 1 and the sum of \$5,000 on count 2, total fine of \$10,000 under both counts. Deft TERRI is sentenced on count 1 to imprisonment for 3 years - to serve 6 months and execution of balance of sentence is suspended and deft is placed on probation for 3 years. Sentence to be served concurrent with count 2. Deft BOVELL is sentenced on count 2 to imprisonment for 3 years to serve 6 months and execution of remainder of sentence is suspended and the deft is placed on probation for 3 years - deft to pay fine of \$2,000 for total fine of \$4,000 under both counts, such sentence to be served concurrently with count 1. Bail contd pending appeal, Appeals forms issued. Court directs Clerk to file Notice of Appeal without fee as to deft JANETERRI. Bail contd pending appeal. Deft BOVELL sentenced on count 1 to imprisonment for 3 years - to serve 6 months and execution of remainder of sentence is suspended and deft is placed on probation for 3 years and deft to pay a fine of \$2,000; deft sentenced on count 2 to imprisonment for 3 years - to serve 6 months and execution of balance of

5a

DATE	PROCEEDINGS
	sentence is suspended and the debt is placed on probation for 3 years, and debt to pay a fine of \$2,000 for a total fine of \$4,000 under both counts, such sentence to be served concurrently with count 1. Appeal forms issued - bail contd pending appeal.
4-9-76	Judgment ^{& commitment} and Order of Probation filed - certified copies to Probation (BOVELL.) and Marshal.
4-9-76	Before PLATT, J -Deft JOYCE is sentenced on count 2 for a term of imprisonment of 8 years and shall become eligible for parole under 18:4208(a)(2) at such time as the Board of Parole may determine and shall pay a fine of \$5,000; on count 1 debt is sentenced to imprisonment for 4 years under 18:4208(a)(2) such sentence to run concurrently with sentence imposed on count 2; debt to pay a fine of \$5,000 for a total fine of \$10,000 on both counts; Appeals forms issued - bail contd pending appeal. Deft WALSH sentenced on count 2 to imprisonment for 5 years under 18:4208(a)(2) and to pay a fine of \$5,000; and sentenced to imprisonment for 4 years under 18:4208(a)(2) - such sentence to run concurrently with sentence under count 2; debt to pay a fine of \$5,000 for a total fine of \$10,000 under both counts. Court directs Clerk to file Notice of Appeal without fee as to debt WALSH. Bail contd pending appeal.
4-9-76	Judgment ^{and Commitment} and Order of Probation filed -certified copies to Marshal and Probation (JOYCE & WALSH)
4-9-76	Notice of Appeal filed for debts. TERRI & WALSH.(no fee)
4-9-76	Docket entries and duplicate of Notice mailed to the Court of Appeals.
4-9-76	Notice of Appeal filed (JOYCE) no fee
4-9-76	Docket entries and duplicate of Notice mailed to the C of A.
4-13-76	Notice of Appeal filed (BOVELL)
4-13-76	Docket entries and duplicate of Notice mailed to the C of A
4/16/76	Record on appeal certified and mailed to court of appeals

A TRUE COPY
 ATTEST
 DATED 4/16/76
 DEPT. OF CORRECTIONS
 CLERK

INDICTMENT

RJD:SK:lr
F#751,480

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

75CR 488

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

----- X
UNITED STATES OF AMERICA

★ JUN 16 1975 ★

- against -

WILLIAM J. JOYCE,
DONALD WALSH,
EDWARD J. BOYLE,
THOMAS M. BURNS,
JAMES GRIMSLEY,
LEONARD NITTI,
JANET TERRI, also known as
Janet Ferry,
ROBERT SCHOENLY,
PETER AREITER,
LOUIS BOVELL,
JOHN FREUDIGER and
MORTON HANAN,

TIME A.M.
P.M.

INDICTMENT

Cr. No. _____
(T. 18, U.S.C., §371,
§659 and §2)

Defendants.

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 17th day of March 1975 and the 27th day of March 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN did knowingly, intentionally and wilfully combine, conspire, confederate and agree, together with Barbara Carson, named as a co-conspirator

but not as a defendant herein, and with others, to commit an offense against the United States in violation of Title 18, United States Code, Section 659 and Section 2, to wit, to knowingly and wilfully receive and have in their possession approximately One Hundred Seventeen (117) cartons of Timex watches, having a value of approximately Eight Hundred Thirty Thousand Dollars (\$830,000.00), which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN then knowing the said goods to have been stolen.

In furtherance of said conspiracy and to effect the objectives thereof, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JAMES GRIMSLEY, LEONARD NITTI, JANET TERRI, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN and the unindicted co-conspirator Barbara Carson committed the following:

O V E R T A C T S

1. On or about March 17, 1975, the defendants DONALD WALSH, THOMAS M. BURNS, PETER AREITER, LOUIS BOVELL and MORTON HANAN met at Lynbrook, New York.

2. On or about March 21, 1975, the defendant JANET TERRI, also known as Janet Ferry, made a telephone call to

Hub Truck Rental Company.

3. On or about March 21, 1975, the defendant ROBERT SCHOENLY rented a truck.

4. On or about March 24, 1975, the defendants WILLIAM J. JOYCE, THOMAS M. BURNS and LEONARD NITTI met at Lynbrook, New York.

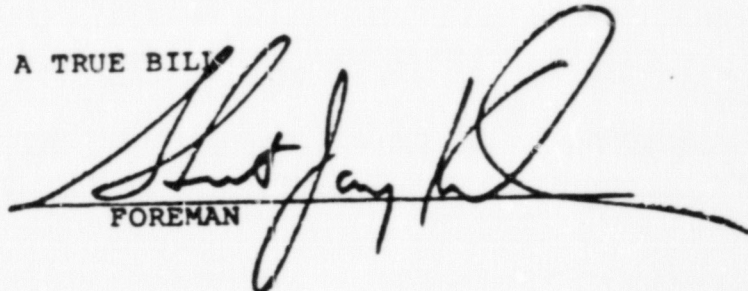
5. On or about March 27, 1975, the defendants WILLIAM J. JOYCE, EDWARD J. BOYLE, THOMAS M. BURNS and JAMES GRIMSLEY and unindicted co-conspirator Barbara Carson met at Brooklyn, New-York. (Title 18, United States Code, Section 371)

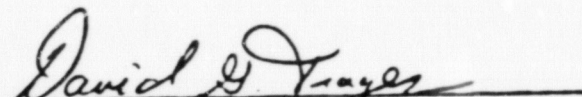
COUNT TWO

On or about and between the 17th day of March 1975 and the 27th day of March 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, ^{Janet Burns} JANET TERRE, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN FREUDIGER and MORTON HANAN did willingly and unlawfully receive and have in their possession, approximately One Hundred Seventeen (117) cartons of Timex watches, having a value of approximately Eight Hundred Thirty Thousand Dollars (\$830,000.00), which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipei, Taiwan to Queens, New York, the defendants WILLIAM J. JOYCE, DONALD WALSH, EDWARD J. BOYLE, THOMAS M. BURNS, JANET TERRE, also known as Janet Ferry, ROBERT SCHOENLY, PETER AREITER, LOUIS BOVELL, JOHN

FREUDIGER and MORTON HANAN then knowing the said goods to have been stolen. (Title 18, United States Code, Section 659 and Section 2)

A TRUE BILL


FOREMAN


UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. NY

★ APR 9 1976 ★

----- X

UNITED STATES OF AMERICA :

- vs - :

JANET TERRI aka Janet Ferry :

----- X

TIME AM.....

PM.....NOTICE OF APPEAL

File No: 75 CR 488

Notice is hereby given that the defendant

JANET TERRI hereby appeals in forma pauperis
to the United States Court of Appeals for the Second Circuit
from the final Judgment entered in this proceeding on the
9th day of April 1976

Dated: Brooklyn, New York

April 9, 1976

By Direction of the Court

LEWIS ORGEL, CLERK
U.S. District Court
Eastern District of New York
on behalf of the defendant

[1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

WILLIAM J. JOYCE, DONALD WALSH,
EDWARD J. BOYLE, THOMAS M. BURNS,
JAMES GRIMSLEY, LEONARD NITTI,
JANET TERRI, also known as
Janet Ferry, ROBERT SCHOENLY,
PETER AREITER, LOUIS BOVELL,
JOHN FREUDIGER and MORTON HANAN,

Defendants.

Indictment No.
75-CR-488

United States Courthouse
Brooklyn, New York

January 19, 1976
10:00 o'clock A.M.

Before:

HONORABLE THOMAS C. PLATT, U.S.D.J.

ILENE GINSBERG
OFFICIAL COURT REPORTER

46.H

2 Appearances:

3

4 DAVID G. TRAGER, ESQ.
5 United States Attorney
6 for the Eastern District of New York

7 BY: STEVEN KIMELMAN, ESQ.
8 Assistant U.S. Attorney

9 VINCENT VERDIRANO, ESQ.
10 Attorney for Defendant Joyce

11 JOHN C. CORBITT, ESQ.
12 Attorney for Defendant Walsh

13 THOMAS O'BRIEN, ESQ.
14 Attorney for Defendant Grimsley

15 MARSHALL KAPLAN, ESQ.
16 Attorney for Defendant Terri

17 WILLIAM H. SPERLING, ESQ.
18 Attorney for Defendant Bovell

19 CHARLES AXELROD, ESQ.
20 -and-

21 PAUL WARBURG, ESQ.
22 Attorney for Defendant Freudiger

23 CARL MALTESE, ESQ.
24 Attorney for Defendant Hanan

25

rs/ss
laml

1 THE CLERK: United States against William
2 Joyce, James Grimsley, Janet Terri, Louis Bovell,
3 John Freudiger, Morton Hanan.

4 THE COURT: Your client is here?

5 MR. O'BRIEN: Yes, he is, your Honor.

6 THE COURT: I see Mr. Corbitt is here. Is
7 Mr. Walsh here?

8 MR. CORBITT: Yes.

9 THE COURT: Is Mr. Verdirano here?

10 MR. VERDIRANO: Yes, sir.

11 THE COURT: Your client?

12 MR. VERDIRANO: Yes.

13 THE COURT: Mr. Kaplan here?

14 MR. KAPLAN: Yes.

15 THE COURT: Is your client here?

16 MR. KAPLAN: Yes.

17 THE COURT: Mr. Sperling?

18 MR. SPERLING: My client is.

19 THE COURT: Mr. Bovell and Mr. Warburg?

20 Are you Mr. Freudiger?

21 MR. FREUDIGER: Yes.

22 THE COURT: Where is your attorney?

23 MR. FREUDIGER: I have just spoken to him. He
24 couldn't make it. He said he would send someone else
25 for today.

1 THE COURT: Do you know the name of his
2 associate?

3 MR. FREUDIGER: He was tied up in Stanford on
4 the train. He is not here either.

5 THE COURT: Mr. Hanan, where is he?

6 MR. FREUDIGER: He's outside.

7 THE COURT: Do you want to get him in here,
8 Mr. Freudiger.

9 MR. FREUDIGER: Yes.

10 THE COURT: Mr. Hanan, where is your attorney?

11 MR. HANAN: Excuse me, your Honor?

12 THE COURT: Where is your attorney?

13 MR. HANAN: I just called him. I'm waiting
14 for a phone call back outside. I'm waiting outside
15 for the phone to ring.

16 THE COURT: Does he know where you are?

17 MR. HANAN: Yes. Definitely. That's why I'm
18 on the phone.

19 THE COURT: When your attorney arrives --

20 MR. HANAN: Could I wait outside?

21 THE COURT: When your attorney arrives in this
22 Courtroom you will see we do not tolerate this type
23 of delay except in extraordinary circumstances. I
24 would normally impose fines if anybody, either their
25 clients or attorneys if they cause this kind of delay.

3 1 Not only because it is a delay to me, but it is a
2 delay to the jurors and a delay to each of the other
3 ones who show up here on time.

4 MR. HANAN: Your Honor, may I go outside and
5 wait for the phone call?

6 THE COURT: Yes, you may.

7 MR. HANAN: Thank you.

8 THE COURT: In any event what I'm going to do
9 is require you to sit in order around that table so
10 number one, the stenographer can follow this cast of
11 characters. Also, I can follow the cast of
12 characters. So if we start, going clockwise, with
13 having either Mr. Joyce or Mr. Verdirano sitting in
14 the first seat closest to the jury box.

15 MR. VERDIRANO: This one?

16 THE COURT: Yes. Mr. Joyce will sit there.
17 Then Mr. Walsh and Mr. Corbitt. Then Mr. Grimsley
18 and Mr. O'Brien. Mr. Terri and Mr. Kaplan.

19 MS. TERRI: Excuse me. Mr. Kaplan has just
20 given to me this morning, I changed lawyers in
21 midstream. How does he know anything about my case.
22 How does he --

23 THE COURT: Did you discuss the situation
24 with Mr. Lumbardo?

25 MR. KAPLAN: I talked with Mr. Corbitt quite

4 1 a bit since Friday.

2 MR. CORBITT: I spoke to Mr. Kaplan about it.

3 THE COURT: Have you had a chance to talk to
4 Ms. Terri?

5 MR. KAPLAN: I spoke to her a few minutes
6 this morning.

7 THE COURT: Do you feel you are capable of
8 presenting her case?

9 MR. KAPLAN: I certainly think I'll catch up
10 with everyone else by the time the jury is picked.

11 THE COURT: Is there anything you wish to
12 discuss with her right now?

13 MR. KAPLAN: Not right now.

14 THE COURT: Anything you wish to do?

15 MS. TERRI: I don't know what lawyers do with
16 clients, but I know three minutes or four minutes
17 that I spoke to him --

18 THE COURT: While we are waiting for the
19 arrival of the other counsel in the case, do you
20 want to discuss other aspects of the case with him?

21 MS. TERRI: I guess so.

22 THE COURT: Would you like to use my witness
23 room across the hall?

24 MR. KAPLAN: Yes.

25 THE COURT: Mr. Bovell and Mr. Sperling. Then

5 1 Mr. Freudiger and Mr. Warburg. Then Mr. Hanan and
2 Mr. Maltese.

3 Mr. Passalague, are you representing someone
4 here?

5 MR. PASSALAGUE: My client disposed of the
6 matter. I came to watch.

7 THE COURT: You represented Mr. Schoenly?

8 MR. PASSALAGUE: Yes.

9 THE COURT: Yes, Mr. Hanan?

10 MR. HANAN: My lawyer is on his way here.

11 THE COURT: Where is he coming from?

12 MR. HANAN: Smithtown.

13 THE COURT: I come from almost there myself.

14 MR. HANAN: Me too.

15 THE COURT: Do you know how long he'll be?

16 MR. HANAN: His secretary said she couldn't
17 understand why he isn't here yet.

18 THE COURT: Just because it's cold outside and
19 the Long Island Railroad is an hour late, you have to
20 leave an extra hour when you have the distance to
21 travel.

22 Do you have any preliminary housekeeping
23 matters?

24 MR. KIMELMAN: Your Honor, I have some.

25 THE COURT: Does that involve all of the

6 1 defendants?

2 MR. KIMELMAN: They do, your Honor. One
3 involves Mr. Hanan, one involves Mr. Freudiger.

4 THE COURT: I suppose we have to hold those
5 until we have other counsel.

6 MR. KIMELMAN: Right. I have spoken to
7 Mr. O'Brien. I have indicated to Mr. O'Brien there
8 was a statement made by his client and it will be
9 offered in evidence. There seems to be no need for
10 a hearing as to that statement. Mr. O'Brien has the
11 statement.

12 I do have some Brady material that I can
13 distribute to counsel. I would also say the
14 government obtained possession of tapes and
15 transcripts from the New York City Port Authority
16 Police Department. These tapes and transcripts are
17 between a detective of the Port Authority and one of
18 the defendants who pleaded guilty. That is Edward
19 Boyle. They involve the events on March 27th when
20 Boyle negotiated with this undercover detective to
21 purchase the watches.

22 They do not mention the name of any of the
23 other defendants. There is also one taped
24 conversation between two detectives and an undercover
25 detective and another detective. Since they might be

1 considered Brady material on the trial, these
7 2 detectives will be called as witnesses. I will turn
3 over the transcripts and invite any counsel to,
4 if they wish to, to come to my office to listen to
5 the tapes.

6 MR. VERDIRANO: On behalf of Mr. Joyce I
7 would like to ask are the tapes going to be introduced
8 by the government in their case in chief?

9 MR. RIMELMAN: That is why I am doing it this
10 way and asking them as potential Brady material.
11 Because we do not intend to offer them at all.

12 MR. O'BRIEN: I would for one like to listen.

13 THE COURT: We'll pick a jury in the meantime.
14 It takes time to assemble counsel. The Court is
15 going to be wealthy if it imposes fines on every
16 one that is late. I mean \$100 for each five minutes
17 of lateness.

18 MR. SPERLING: There goes my fee.

19 THE COURT: You will learn.

20 MR. SPERLING: You'll get me up at 5:00 o'clock
21 in the morning.

22 THE COURT: That is when I get up.

23 MR. SPERLING: I don't live that far,
24 your Honor.

25 THE COURT: That is what you get for practicing

1 in this Court.

2 What else, Mr. O'Brien?

3 MR. O'BRIEN: The preliminary challenges,
4 since there are seven attorneys I would like to
5 make an application --

6 MR. AXELROD: I'm sorry, your Honor. My
7 name is Axelrod. I'm here for Mr. Warburg.

8 THE COURT: I was just saying to other
9 counsel, if you are late you get fined.

10 MR. AXELROD: Your Honor, the Penn Central
11 was delayed over an hour and I had my office call.

12 THE COURT: You're going to have to make
13 your plans accordingly. I won't fine you this time.
14 If you are late in the future you are going to be
15 fined \$100 for each five minutes you are late.
16 Even if it means leaving early and you have to get
17 up at 5:00 o'clock as Mr. Sperling says and get in
18 here. So bear it in mind.

19 The same goes for Mr. Maltese who still
20 hasn't shown up.

21 Mr. Kimelman has announced that he's going
22 to turn over Brady material which I assume he'll
23 do now. I will ask the clerk to call down to the
24 jury to determine how many jurors we have.

25 What is your thinking, Mr. O'Brien?

9 1 MR. O'BRIEN: It would seem it would be fair
2 if the challenges were enlarged from ten to
3 fourteen. There are seven counsel involved.

4 THE COURT: Mr. Kaplan, Mr. O'Brien has
5 made up an application to enlarge the challenges
6 from ten to fourteen on behalf of the defendants.
7 I haven't heard from Mr. Kimelman?

8 MR. KIMELMAN: I'm waiting, your Honor.

9 THE COURT: Anybody else have any suggestions?

10 MR. KIMELMAN: Your Honor, I would object to
11 increasing it to that number unless in accordance
12 with the Court granting the motion the government
13 have a proportional increase. Otherwise the
14 defendant would have fourteen against the government's
15 six challenges.

16 THE COURT: I'm supposed to give you 8.4?

17 MR. KIMELMAN: It doesn't have to be exactly
18 proportional. I'm suggesting to the Court, I would
19 make it eight to fourteen. I believe that would
20 be a fair increase.

21 MR. AXELROD: It is my understanding pursuant
22 to the rules where there is a multi-defendant case,
23 your Honor, while counsel can request additional
24 challenges the government is still limited to six.
25 I have a copy.

10 1

THE COURT: It's very simple. When the defendant in the Watergate case asked Judge Sirica for additional challenges, Judge Sirica said you can have twenty and the government gets twenty.

5

MR. O'BRIEN: I believe the defense has to consent. Your Honor could deny our motion for additional challenges, although I would suggest --

7

8

THE COURT: I think it is a fair request and I think it is a fair solution that Mr. Kimelman proposed. Fourteen for the defendant, eight for the government.

10

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12

MR. O'BRIEN: No objection.

13

MR. SPERLING: No objection.

14

MR. CORBITT: No objection.

15

THE COURT: We'll do it that way. I suspect we ought to have the jury of at least sixty. See if they have sixty jurors down there.

16

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18

Everyone is here except Mr. Maltese.

19

MR. CORBITT: We have one further matter if I can make a request to the Court. I understand the government is ordering daily copy. I am representing Mr. Walsh under the Criminal Justice Act and I would like a copy supplied to the defense.

20

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MR. O'BRIEN: Your Honor, I would also request a copy. I'm representing Mr. Grimsley under the

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11 1 Criminal Justice Act also. I think Mr. Corbitt and
2 I could probably share a copy.

3 MR. AXELROD: I would join in the
4 application.

5 MR. SPERLING: I don't want to be left out.
6 I want it too. I can share it with somebody.

7 MR. KAPLAN: I want one for myself.

8 THE COURT: Why can't you all share it? You,
9 Mr. O'Brien, Mr. Kaplan, Mr. Sperling, Mr. Corbitt,
10 you can all share a copy.

11 MR. O'BRIEN: That is very difficult dealing
12 with all these attorneys who want to read the copy.

13 MR. KAPLAN: We have to think of the Court
14 Reporter.

15 THE COURT: Not that much. I can't see why
16 one copy wouldn't serve your purposes.

17 MR. O'BRIEN: Your Honor, it is often needed
18 for examination on summation. It is a lot easier to
19 have a copy and it is rather difficult to prepare
20 a summation with five other attorneys all trying
21 to share one record.

22 THE COURT: Five assigned counsel?

23 MR. O'BRIEN: Yes, your Honor.

24 THE COURT: Well, all right, I will authorize
25 two copies. You're going to have to squabble between

12 1 you.

2 MR. O'BRIEN: Your Honor, what is the
3 Court's schedule, will you be sitting on Friday?

4 THE COURT: No. Possibly on Friday
5 afternoon if we drag too much. But it is unlikely.
6 How long are we going to take here?

7 MR. KIMELMAN: Your Honor, there is
8 approximately ten witnesses for the government.
9 Five of them are accomplice witnesses, depending
10 on cross-examination of counsel I believe the
11 government's case would probably be concluded in
12 five trial days.

13 THE COURT: Five trial days. They are all
14 going to trial.

15 MR. KIMELMAN: Your Honor, may I ask the
16 Court, I have my first witness residing out in
17 Suffolk County. I had him on call now. If he is
18 to come in this afternoon I would have to call him
19 fairly shortly. I would ask the Court --

20 THE COURT: I can't tell you what the story
21 is right now until Mr. Maltese arrives. I don't
22 know when he is going to arrive.

23 MR. KIMELMAN: I would ask the Court that
24 we could pick a jury and give openings and the
25 first witness be put on.

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THE COURT: Maybe as a practical matter if

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you assume we're going to have seven openings?

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MR. KIMELMAN: Yes.

4

THE COURT: None of them have to open if

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they don't want to.

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(Continued next page.)

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MR. SPERLING: Your Honor, you're not sure whether we're going to sit Friday afternoon, is that what you said?

THE COURT: My present thinking is not to sit on Friday afternoon. As you know I have motions and a calendar call on Friday morning. I only have non-jury cases, civil cases which I try on Friday afternoon, or hearings or criminal cases.

But, if this case starts to drag I might well sit on Friday afternoon.

MR. SPERLING: I have a matter in Suffolk County on Friday. It wouldn't take long. If that is the case I would ask your Honor to sign this.

THE COURT: This Friday?

MR. SPERLING: Yes.

THE COURT: I'm not thinking about this Friday. Don't use that for anything else.

MR. SPERLING: No.

MR. KIMELMAN: Your Honor, perhaps I can wait until noon to call the witness.

THE COURT: Yes.

MR. AXELROD: Your Honor, with respect to the other matter --

THE COURT: Mr. Maltese, I'll tell you know and I won't tell you again, the next time you're late

1 I don't care what the excuse is. You're going to
2 get a fine of \$100 for every five minutes you are
3 late.

4 MR. MALTESE: I am sorry.

5 THE COURT: I understand you are from
6 Suffolk County, but bear in mind I am from Suffolk
7 County and that is no excuse, not in this Court.
8 If you are not here by five past 10:00 tomorrow,
9 you're going to have to pay a \$100 fine. Do you
10 understand?

11 MR. MALTESE: I do, your Honor.

12 THE COURT: We have proceeded and made a
13 number of determinations without you. The
14 defendants asked for fourteen preemptory's and the
15 government said they wanted a proportional
16 increase and it was agreed upon by everybody.
17 There would be fourteen preemptory challenges
18 for the defendant, two apiece and eight for the
19 government. I assume you agree, all the others
20 have agreed?

21 MR. MALTESE: If they agreed, I will go
22 along.

23 THE COURT: Mr. Kimelman was about to turn
24 over certain Brady material, including certain tapes
25 and transcripts which he says these transcripts and

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1 tapes are not going to be used in the case in chief.
2 But at any recess if you are willing to come down
3 to his office you can listen to the tapes. You
4 can do that during the course of the trial.

5 Is there any other material?

6 MR. KIMELMAN: Since all counsel are here,
7 there are what the government would term full
8 exculpatory statements. One from Mr. Freudiger
9 and one from Mr. Hanan which the government intends
10 to offer as part of its direct case.

11 I am putting counsel on notice. I believe
12 counsel at least, counsel for Mr. Freudiger has the
13 statements already. I don't know about Mr. Maltese
14 if he has Mr. Hanan's statements. These were both
15 interviews with the FBI prior to any arrest.

16 MR. VERDIRANO: Can I ask Mr. Kimelman if
17 any of the defendants are mentioned in the statements?

18 MR. KIMELMAN: They are oral false
19 exculpatory statements where both defendants deny
20 being in certain places and doing certain things.
21 We will not mention any other defendants.

22 If I may continue, your Honor. In the
23 statement of Mr. Grimsley which we discussed before,
24 which will be offered as part of the direct case,
25 it is also an oral statement.

1 There is mention of the defendant Joyce in
2 that oral statement. But there will be no mention
3 of Mr. Joyce when the agent testifies. Thereby
4 from the government's view eliminating the problem
5 under Bruton.

6 MR. O'BRIEN: I in cross-examining the
7 officer may very well bring that name out.

8 THE COURT: That is your problem.

9 MR. VERDIRANO: That's my problem. Maybe
10 we ought to redact statements, the written
11 recollection of the agent or is he going to leave
12 the name Joyce in. What does the government intend
13 to do?

14 THE COURT: We have to wait until we get to
15 that part of the case.

16 MR. KIMELMAN: It is an old statement and
17 the agent as part of his direct testimony will not
18 mention the name of Joyce at all.

19 THE COURT: If you fellows can't agree
20 amongst yourselves on cross-examination, you'll
21 have to fight amongst yourselves. Don't fight
22 with me.

23 Grimsley does present a slight problem as
24 I recall. There was a supplemental indictment for
25 him. As far as I can see, we can just add his name

1 to the indictment on Count 2 of the original
2 indictment.

3 MR. KIMELMAN: That's correct.

4 THE COURT: Is there any objection to
5 consolidating Mr. Grimsley, just to add his name
6 into Count 2 rather than having him considered in
7 a supplemental indictment?

8 MR. O'BRIEN: I would consent.

9 MR. SPERLING: I would.

10 THE COURT: Any objection?

11 MR. MALTESE: No objection.

12 THE COURT: I could tack on his name to the
13 list of the defendants in Count 2.

14 MR. KIMELMAN: Very good, your Honor.

15 THE COURT: You don't have to consider the
16 second indictment as such. This way there will be
17 just one indictment for the jury to decide.

18 MR. KIMELMAN: Is it my understanding, your
19 Honor, upon consent of counsel the indictment has
20 been amended?

21 THE COURT: Anybody have any objection?

22 Add his name to Count 2 of the first
23 indictment.

24 Most of you are not familiar with this but
25 there was a second indictment returned against

1 Mr. Grimsley that recited the counts verbatim, also
2 the allegations of Count 2 against Grimsley alone.
3 That is all.

4 What we're going to do is put Grimsley's
5 name on Count 2 of the original indictment.

6 MR. MALTESE: I believe there are also
7 results of a line-up that were supposed to be
8 revealed?

9 MR. VERDIRANO: Handwriting exemplars also.

10 MR. KIMELMAN: We have as part of the Brady
11 material, we have the laboratory report on the
12 handwriting exemplars. I will indicate for the
13 record the handwriting expert was unable to make
14 any determination as to the handwriting on any of
15 the exemplars that he took. That report will be
16 turned over. Mr. Maltese is referring to a line-up
17 in which his client participated with Mr. Maltese
18 representing him.

19 If Mr. Maltese wants to know the results of
20 the line-up, I would be happy to disclose it at
21 the present time. I will be happy to show him the
22 line-up pictures and to indicate what the witnesses
23 viewing the line-up responded at the time.

24 THE COURT: Any problem?

25 MR. MALTESE: No problem, your Honor.

1 THE COURT: As far as the indictment is
2 concerned, what I'm going to do, if you want to
3 look at your copies, as far as counsel, I'm going
4 to eliminate Edward J. Boyle because he has plead
5 guilty. I am not going to recite him.

6 MR. O'BRIEN: Your Honor, I would object to
7 that.

8 THE COURT: You want him recited?

9 MR. O'BRIEN: Yes.

10 THE COURT: I will say to the jury that the
11 following are named as defendants but they are not
12 here for trial.

13 MR. KIMELMAN: Your Honor, I think in this
14 case it's less of a problem, each of the defendants
15 named has plead guilty will testify.

16 THE COURT: They want to make sure they're
17 named as defendants.

18 MR. KIMELMAN: That is fine. I have no
19 objection.

20 THE COURT: Nitti is not a defendant in
21 Count 2 anyway. Schoenly is out. Areiter is out.
22 I will put a little check mark next to it and
23 explain to the jury that they are not on trial
24 here. The same is true here, Boyle, Burns, Nitti,
25 Schoenly, Areiter.

1 Any of you have any particular questions you
2 want me to ask the jury?

3 MR. MALTESE: Your Honor, can we submit
4 questions during the course of the voir dire?

5 THE COURT: I was hoping to expedite it by
6 you telling me now?

7 MR. O'BRIEN: I would like to know what
8 organizations if any the members of the jury belong
9 to.

10 THE COURT: What type?

11 MR. O'BRIEN: Any type. Volunteer fire
12 department.

13 THE COURT: When the American Bar Association
14 sent out a form for me to fill in on organizations
15 that I was a member of, I think I supplemented it
16 three times because I couldn't remember them all.

17 MR. O'BRIEN: I think the average juror
18 would not belong to that many organizations. I
19 think it is an intelligent question that you can base
20 a possible preemptory challenge on. I would like
21 to know if they are a member of the auxiliary
22 police department, I wouldn't want him sitting on
23 a criminal jury.

24 THE COURT: I'll do it within limits. You
25 may find the jury selection can drag out for days.

1 Anything else? I'll try to see how extensive
2 it gets. Anybody want to ask any questions?

3 MR. O'BRIEN: The last thing is the 3500
4 material. When will we be getting the 3500 material?

5 MR. KIMELMAN: Your Honor, I intend to give
6 counsel 3500 material just before each witness
7 takes the stand. The 3500 material pertaining to
8 that witness.

9 MR. KAPLAN: Maybe you would reconsider in
10 expediting this trial. There are too many of us to
11 sit around and read this stuff during the trial.

12 MR. KIMELMAN: Your Honor, the 3500 material
13 is not that voluminous. It could be read during the
14 examination, both of government counsel and the
15 seven defense counsel.

16 MR. O'BRIEN: The only thing I would
17 possibly suggest, if we could get the 3500
18 material even at 9:30 in the morning for those
19 witnesses that are going to testify in the morning --

20 THE COURT: He can hand it to you the moment
21 they get on the stand. I think Mr. Kimelman
22 understands the delay in the trial. If it is
23 anything more than a page or two long I hope he
24 would try to get it to you as early as possible so
25 we don't have to take time and you will have an

1 opportunity to read it. There may be one or two
2 slow readers.

3 MR. VERDIRANO: Well, it would be hard to
4 read it while the witness is on the stand. It's
5 almost an impossible situation.

6 THE COURT: Let us get the jury up. For
7 those of you who were not here when I laid down the
8 rules, Mr. Joyce and Mr. Verdirano are going to sit
9 in the front row. This will be going clockwise.
10 Then there will be Mr. Walsh and Mr. Corbitt. Then
11 Grimsley and Mr. O'Brien. Miss Terri and Mr. Kaplan.
12 Mr. Bovall and Mr. Sperling. Mr. Freudiger and
13 Mr. Axelrod. Then Mr. Hanan and Mr. Maltese.

14 MR. KIMELMAN: Now that all counsel are
15 present, does your Honor believe that the first
16 witness will take the stand today?

17 THE COURT: I would hope so.

18 MR. O'BRIEN: Your Honor, may I suggest in
19 view of the hour right now, by the time we pick the
20 jury and make the opening statements, possibly this
21 afternoon I think it will go into the afternoon --

22 THE COURT: At the end of the picking of
23 the jury, it doesn't take more than an hour to
24 drive in from Suffolk. Everyone thinks Suffolk is
25 part of Europe. It isn't.

1 MR. O'BRIEN: I wasn't thinking of that.
2 What I was thinking of, your Honor, is the tapes.
3 Possibly we can listen to them this afternoon.

4 MR. AXELROD: Also may I be heard with
5 respect to that? I'm filling in for Paul
6 Warburg who is before Judge Kanella today. He
7 assured me he will sum up today. Under the
8 circumstances, since he will be trying the case,
9 I would request, although I'm prepared to pick a
10 jury and open, I request that we have testimony
11 tomorrow morning so that Mr. Warburg --

12 THE COURT: We'll see how it goes.

13 (Whereupon, the jury selection commenced.)

14 (Continued next page.)
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A F T E R N O O N S E S S I O N

1/1 IG

(Prospective jurors not present.)

MS. TERRI: Since we have been starting to pick up jurors and stuff I don't feel that I can be represented by this man.

He is writing down another case. He has not made any kind of approach for the witnesses. I don't understand how I can be represented right.

THE COURT: Mr. Kaplan is a very able attorney. I assigned him to you because your attorney that I originally assigned to you, Mr. Lombardo, got himself engaged in a murder trial in the state court.

Now, there are various ways of picking a jury. The fact that Mr. Kaplan chooses not to exercise preemptory challenges --

MS. TERRI: But sitting there and writing for another case?

THE COURT: I don't know what Mr. Kaplan does with his time but I can assure you the fact that he is making notes on another case does not mean that he is not concerned with your interests.

MS. TERRI: Well, I am concerned about my interests --

THE COURT: You can get retained counsel if you like but when the Court assigns counsel you more

1 or less put yourself in the hands of the attorney
2 and the Court.

3 MS. TERRI: When Mr. Lombardo comes back
4 can he represent me?

5 THE COURT: If it is amenable to Mr. Kaplan.
6 Do you want to represent yourself?

7 MS. TERRI: I am not qualified. How can I?

8 THE COURT: Has Mr. Kaplan refused to do
9 things that you have asked him to do during the course
10 of this trial?

11 MS. TERRI: What can I ask him to do for me
12 at this point?

13 THE COURT: I am sure if you say, "I don't
14 like Juror No. X, kindly do something about him
15 or her," I am sure Mr. Kaplan would do whatever
16 you suggest. But if Mr. Kaplan feels, as far as
17 you are concerned, that the best thing for you to
18 do is maintain a low profile, as they say, or if
19 the jury doesn't look objectionable to him, that
20 doesn't mean he is not representing your interests.
21 Let me illustrate what I mean by way of example.

22 I can remember an attorney by the name of
23 Henry Singer who was a well-known and distinguished
24 defense attorney and years ago a United States
25 attorney. He always used to say, "I'll take the

3 1 first twelve jurors that are drawn from the wheel."

2 MS. TERRI: Your Honor, he is not even making
3 that opinion known.

4 THE COURT: Well, isn't he making that known
5 to co-counsel by suggesting he has no challenges?

6 MS. TERRI: I don't know. If I have some-
7 thing to say I try to say it.

8 THE COURT: Well, people try cases in various
9 ways. I don't think that makes him incompetent.

10 MS. TERRI: I didn't say he was incompetent.

11 THE COURT: Well, he may think it is to your
12 benefit not to join the huddle with the other
13 defense counsel for one reason or another. Perhaps
14 he wishes to have you appear to be separate and
15 apart from the other defendants. I don't know.

16 MS. TERRI: I will go with what you say.

17 THE COURT: I don't know. You have to
18 exercise your own judgment.

19 If you wish to appear pro se and carry on
20 your own defense without counsel I will accede to
21 that request. But I cannot, halfway -- or at this
22 point -- through a trial say to a defendant with
23 assigned counsel that I am going to disqualify
24 that counsel and appoint new counsel unless something
25 comes to my attention that I find objectionable.

1 Mr. Kaplan has a very fine reputation.

2 MS. TERRI: Okay.

3 THE COURT: Call the jurors back up.

4 (Whereupon prospective jurors entered the
5 jury box.)

6 THE COURT: I am sorry for the delay. We
7 had a legal question to discuss and I was a little
8 late getting out here myself. So, it was my fault
9 and not anyone else's.

10 We will get the additional jurors and then
11 proceed.

12 You will have to bear with me when I read the
13 indictment. And I don't think it will do you any
14 harm to listen to the nature of the charge and all
15 that. For the benefit of the new jurors who will
16 join the panel I have to bring them up to the same
17 point you are currently at.

18 (Whereupon prospective jurors entered the
19 courtroom.)

20 THE COURT: Will the jurors that just came up
21 please stand and raise your right hands.

22 (Prospective jurors complied.)

23 (Whereupon prospective jury panel was sworn
24 by the clerk of the court.)

25 (Whereupon prospective juror entered courtroom.)

5 1 THE CLERK: Are you a juror?

2 PROSPECTIVE JUROR: They told me to come up
3 here, yes.

4 THE COURT: Madam, remain standing and raise
5 your right hand.

6 (Whereupon prospective juror was sworn by
7 the clerk of the court.)

8 THE COURT: Now, all jurors in the courtroom,
9 please listen to the questions that I will ask the
10 new jurors because one or more of you may be chosen
11 to sit in their place. I don't want to have to
12 repeat everything a third time.

13 We have been in the process of selecting a
14 jury this morning on this case and there is still
15 some additional challeges available to both sides.
16 So, you are supplemental jurors who are available
17 for the purpose of filling out this jury and the
18 alternates still to be chosen.

19 This is a criminal case. It is brought on
20 before you by means of an indictment.

21 An indictment is not evidence of any kind
22 in a case. It is merely a charge which brings
23 the defendants into court. It is not to be taken
24 by you as proof or evidence of any kind in the
25 case. The fact that I read the indictment to you

1 does not give it any such status as evidence or
2 proof.

3 All the defendants on trial here have pled
4 not guilty to the indictment and they are entitled
5 to the presumption of innocence accorded to any
6 defendant in a criminal case.

7 The burden is upon the prosecution to prove
8 the defendants guilty beyond a reasonable doubt
9 and that burden remains with the prosecution through-
10 out the trial.

11 This indictment is against twelve named
12 defendants. However, only certain of the defendants
13 are on trial before this jury. Five of the named
14 defendants are not on trial. I will read the names
15 of those defendants to you now who are not on trial --
16 I repeat, not on trial. Those defendants are
17 Edward J. Boyle, Thomas M. Burns, Leonard Nitti,
18 Robert Schoenly and Peter Areiter. They are not
19 on trial.

20 The defendants on trial before you are
21 William J. Joyce, Donald Walsh, James Grimsley,
22 Janet Terri, also known as Janet Ferry, Louis
23 Bovell, John Freudiger and Morton Hanan.

24 I will read the indictment to you and you
25 will note that it contains the names of all those

1 on trial and not on trial. You are only concerned
2 with those on trial.

3 Count One of the indictment alleges a con-
4 spiracy charge.

5
6 On or about and between the 17th day of
7 March 1975 and the 27th day of March 1975, both
8 dates being approximate and inclusive, within the
9 Eastern District of New York, the defendants William
10 J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M.
11 Burns, James Grimsley, Leonard Nitti, Janet Terri
12 also known as Janet Ferry, Robert Schoenly, Peter
13 Areiter, Louis Bovell, John Freudiger and Morton
14 Hanan did knowingly, intentionally and willfully
15 combine, conspire, confederate and agree together
16 with Barbara Carson, named as a co-conspirator but
17 not as a defendant herein, and with others, to
18 commit an offense against the United States in
19 violation of Title 18, United States Code, Section
20 659 and Section 2, to wit, to knowingly and will-
21 fully receive and have in their possession approxi-
22 mately 117 cartons of Timex watches, having a value
23 of approximately \$830,000, which goods were stolen
24 from Flying Tiger Airlines at John F. Kennedy
25 International Airport, Queens, New York on March
17, 1975, while moving as a part of a foreign shipment

1 of freight from Taipei, Taiwan to Queens, New York,
2 the defendants William J. Joyce, Donald Walsh
3 Edward J. Boyle, Thomas M. Burns, James Grimsley,
4 Leonard Nitti, Janet Terri also known as Janet Ferry,
5 Robert Schoenly, Peter Areiter, Louis Bovell, John
6 Freudiger and Morton Hanan, then knowing the said
7 goods to have been stolen.

8 In furtherance of said conspiracy and to
9 effect the objectives thereof, the defendants William
10 J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M.
11 Burns, James Grimsley, Leonard Nitti, Janet Terri
12 also known as Janet Ferry, Robert Schoenly, Peter
13 Areiter, Louis Bovell, John Freudiger and Morton
14 Hanan and the unindicted co-conspirator Barbara
15 Carson committed the following:

16 1. On or about March 17, 1975, the defendants
17 Donald Walsh, Thomas M. Burns, Peter Areiter, Louis
18 Bovell and Morton Hanan met at Lynbrook, New York.

19 2. On or about March 21, 1975, the defendant
20 Janet Terri also known as Janet Ferry, made a tele-
21 phone call to Hub Truck Rental Company.

22 3. On or about March 21, 1975, the defendant
23 Robert Schoenly rented a truck.

24 4. On or about March 24, 1975, the defendants
25 William J. Joyce, Thomas M. Burns and Leonard Nitti

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at Lynbrook, New York.

5. On or about March 27, 1975, the defendants William J. Joyce, Edward J. Boyle, Thomas M. Burns and James Grimsley and unindicted co-conspirator Barbara Carson met at Brooklyn, New York, in violation of Title 18, United States Code, Section 371, the conspiracy section of the code.

Count two is a substantive count.

On or about and between the 17th day of March, 1975 and the 27th day of March, 1975, both dates being approximate and inclusive, within the Eastern District of New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, Janet Terri also known as Janet Ferry, Robert Schoenly, Peter Areiter, Louis Bovell, John Freudiger and Morton Hanan did willfully and unlawfully receive and have in their possession approximately 117 cartons of Timex watches, having a value of approximately \$830,000, which goods were stolen from Flying Tiger Airlines at John F. Kennedy International Airport, Queens, New York, on March 17, 1975, while moving as a part of a foreign shipment of freight from Taipai, Taiwan to Queens, New York, the defendants William J. Joyce, Donald Walsh, Edward J. Boyle, Thomas M. Burns, Janet Terri also known as Janet Ferry,

Robert Schoenly, Peter Areiter, Louis Bovell, John Freudiger and Norton Hanan, then knowing the said goods to have been stolen, all in violation of Title 18, United States Code, Section 659 and Section 2.

Now, the new jurors who have just been placed in the box, I will ask you whether you know any of the defendants or any of their counsel or anyone at the prosecution table and I will ask the defendants and their counsel to rise as I call their names.

You will note they are seated clockwise, first the attorney and then the defendant on the far table away from you in this room.

William Joyce has just risen before you and his counsel, Mr. Vincent Ver Dirano.

Does anyone know either of those two gentlemen?

Donald Walsh and John C. Corbitt, his attorney.

James Grimsley and his counsel, Thomas O'Brien.

Janet Terri, also known as Janet Ferry, and her counsel, Mr. Marshall Kaplan.

Louis Bovell and his counsel, William Sperling. They are seated out of order but I think you will know which is which.

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1 Mr. John Freudiger and he is represented at
2 this portion of the proceeding by Charles Axelrod,
3 who will be replaced tomorrow by Paul Warburgh,
4 an associate of his.

5 Finally, Morton Hanan and his counsel, Mr.
6 Carl R. Maltese --

7 MR. MALTESE: This is my associate, your
8 Honor, Mr. Warren Hurland.

9 THE COURT: Do any of you know any of the
10 gentlemen seated at that table or any of the names
11 I read or the inindicted co-conspirators?

12 Now, the case is being prosecuted by the
13 U.S. Attorney's Office by Mr. Steven Kimelman.

14 Do any of you known anyone in the U. S.
15 Attorney's office including Mr. Kimelman?

16 He is being assisted by Mr. Joseph Sullivan
17 of the FBI.

18 Do any of you know him or anyone in the FBI?

19 We will now proceed with the jury selection.

20 (Whereupon a jury consisting of twelve members
21 and four alternates was sworn and duly impaneled
22 by the clerk of the court at three o'clock p.m.)
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THE COURT: Before letting you put your coats and what have you in the jury room I want to give you certain instructions which will apply throughout the case.

From time to time during the course of this case which probably will last all this weekend perhaps a day or two next week, based on the information given to me -- but that is the best I am able to guess -- I will say to you at recesses and before the end of the day, "Don't discuss the case and I mean more than that. I mean the following: You are not to discuss this case with each other, with anybody outside of this courtroom, inside this courtroom or at any time until the conclusion of the case and until you have received instructions from the Court.

When you go to lunch with each other or when you are in the jury room during a recess, you are not to start discussing the case with each other or anything that goes on in this courtroom. Talk about the super bowl or something other than this case. If one of your fellow jurors starts to discuss the case cut him off.

Similarly, when you go home at night do not discuss the case with your spouses, uncles, aunts, children or anybody until the case is all over and only

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2 1 then with the permission of the Court.

2 There is a good reason for this and like so
3 many things it may seem mysterious to you as will other
4 things done in the courtroom. But, there is a good
5 reason for it.

6 There are two sides to every case and so it is
7 in this case. If you start to discuss the case before
8 the evidence is in and before you hear the instructions
9 you will become prejudiced or biased against one side
10 or the other and it is not fair to make up your minds
11 until you hear all the evidence and the instructions
12 of the Court. After that, the twelve of you sitting
13 as jurors will have the opportunity to discuss the
14 case but not before.

15 Now, the evidence in the case consists of the
16 testimony of the witnesses who take the witness stand
17 here and testify under oath and the exhibits which are
18 marked in evidence.

19 The evidence does not consist of statements and
20 comments and loaded questions and what have you by
21 attorneys for either side of the case.

22 The attorneys will be given an opportunity to
23 give you an opening statement which will serve as a
24 guideline for you to follow the evidence in the case.
25 Those opening statements are not evidence.

3 1 Similarly, at the end of the case the attorneys
2 will sum up on what they think the evidence has shown.
3 That is not evidence in the case.

4 As I said before, the evidence is the testimony,
5 the exhibits marked in evidence.

6 Wait until all the evidence is in before you
7 start making up your minds and until you have heard
8 both sides of the case.

9 In addition, it is always possible, in this case
10 as in other cases, that there may be newspaper articles
11 about this or similar cases or you may hear something
12 on the radio or see something on television about this
13 or a similar case.

14 If you see something in a newspaper, magazine
15 or hear it on the radio or see it on television, turn
16 it off. Don't read anything that might influence you
17 about this case. We don't want you influenced by
18 anything other than what you see and hear in the court-
19 room. That is so your minds will not be biased or
20 prejudiced by material outside this courtroom. We
21 don't want that to happen.

22 I will say from time to time, "Don't discuss
23 the case" and it means all of what I have told you.

24 Do not call your closest relative tonight and
25 say, "Gee, I'm on a jury. Do you know any of defense

4 1 counsel or defendants? What goes on in such and such
2 a situation?"

3 You have just been sworn to be an impartial and
4 fair jury and if anyone of you has any hesitancy about
5 it tell me now.

6 We will take a five minute recess.

7 Some of you know where the jury room is and the
8 Clerk will show you how to go in and out and how to
9 come into the courtroom from downstairs other than the
10 use of the front door.

11 Hang up your clothes in the jury room but do not
12 discuss the case.

13 (Jury excused.)

14 (The following occurred outside the presence of
15 the jury.)

16 THE COURT: It is now almost ten past three. I
17 assume we will have more than one opening and I assume
18 openings may even go over until tomorrow morning. We
19 probably will not start with any witnesses this after-
20 noon which I think everybody wanted anyway.

21 MR. KIMELMAN: For the record, your Honor, the
22 witness is available.

23 THE COURT: Can anybody give me any estimate of
24 how long these openings will be? I don't suppose any-
25 body can.

5 1 MR. KIMELMAN: Mine should take ten minutes or
2 so.

3 MR. CORBITT: About five minutes in behalf of
4 Walsh.

5 MR. VERDIRANO: Five, ten minutes on behalf of
6 my client.

7 THE COURT: I have a Judge's meeting at 5:00
8 and an appointment at a quarter of. Perhaps we will
9 get them all in. In any event, we will have to end at
10 quarter of five.

11 (Recess taken.)

12 (After recess.)

13 (Jury entered jury box.)

14 THE COURT: Now ladies and gentlemen, we are
15 going to have opening statements and as I said to you
16 a moment ago, opening statements are not evidence in
17 the case but merely guides so you will be able to
18 follow the evidence when it is produced during the
19 course of the trial. Bear that in mind when the lawyers
20 provide their opening statements to you.

21 All right, Mr. Kimelman.

22 MR. KIMELMAN: May it please the Court, gentlemen,
23 ladies and gentlemen of the jury:

24 As you know, my name is Steven Kimelman and I
25 am an assistant United States Attorney on the staff of

David Trager in the Eastern District of New York.

It is my job to present the Government's case, present the evidence, argue the evidence to you.

Now, any juror starting a criminal case for the first time, I think wants to know two things: first, what are the defendants charged with; second, what is the evidence against the defendants. The purpose of this opening statement is to give you an idea of both of those things.

Judge Platt has read to you the indictment. It is a two count indictment; one count charging the defendants on trial and five defendants not on trial with conspiracy to possess the Timex Watches and one count charging them with the actual possession of those watches.

The indictment charges that on or about March 17, 1975, that the defendants possessed 117 cartons of Timex Watches and you will learn from that witness stand that on the morning of March 17, 1975 a shipment of Timex Watches was delivered to Flying Tiger Airlines which is a cargo carrier at Kennedy Airport.

One of their planes landed in the early morning hours of March 17. The plane was unloaded and approximately 8:00 or 8:30 that morning two containers

2 containing the 117 cartons of Timex Watches were dis-
3 covered missing and you will hear from that witness
4 stand that the gentleman sitting right over here, Mr.
5 William Joyce, was a cargo handler for Flying Tiger
6 Airlines, a cargo handler working at the airlines in
7 the area at the approximate time that the theft was
8 discovered.

9 You will hear that at approximately 10:00 a.m.
10 in the morning Mr. Joyce went to a bar in Lynbrook and
11 in that bar -- by humorous coincidence known as the
12 Tick Tock Bar -- at the Tick Tock Bar in Lynbrook Mr.
13 Joyce had a conversation with the bartender whose name
14 is Robert Schoenly. He is one of the defendants who
15 is not present.

16 You will learn from Mr. Schoenly himself that
17 he has plead guilty to one of the counts in the indict-
18 ment and he will testify on the witness stand.

19 Mr. Schoenly will tell you that Joyce came into
20 the bar and told him that he had made a hit at the
21 airport and that he had a truck outside and you will
22 learn that when the goods were stolen, 117 cartons
23 were stolen, that a yellow Ryder rental truck was
24 also discovered missing at the same time and while Mr.
25 Joyce and Mr. Schoenly are talking in the bar another

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2 defendant named in the indictment, Peter Areiter, who
3 is also not on trial because you will hear that he has
4 plead guilty and he also will testify, Areiter came
5 into the bar and was asked by Joyce to take someone
6 back to the Flying Tiger's building at Kennedy Airport
7 and Areiter took Joyce's car and drove this individual
8 back to Flying Tigers.

9 You will learn that later that afternoon the
10 defendant, Donald Walsh, seated over near the top of
11 the table, who is the cousin of William Joyce, had a
12 conversation with Mr. Joyce at the Tick Tock Bar.

13 You will learn that Mr. Areiter, the man who
14 drove the individual back to Flying Tigers was asked
15 by Mr. Joyce if he could help move some boxes that
16 evening, the evening of March 17.

17 You will learn that on the evening of March 17
18 some individuals met at the Tick Tock Bar and it was
19 Mr. Walsh and Mr. Areiter and another defendant named
20 in the indictment who is not present, by the name of
21 Thomas Burns -- and Mr. Burns has also plead guilty
22 and will testify for the Government -- along with Mr.
23 Burns and Mr. Areiter and Mr. Walsh, the defendant
24 Louis Bovell, who you will hear referred to in the
25 testimony as "Gunner" was also present in the Tick Tock

Bar on the evening of March 17.

You will hear that these individuals drove to a garage in Oceanside, Long Island; that Mr. Burns was driving a large paint truck that belonged to his employer and that they went into this garage and this garage was owned by the father of the defendant, Hanon, seated over here.

Inside that garage was a yellow Ryder rental truck and while Mr. Walsh, on crutches at the time, spoke with Mr. Hanon, Mr. Areiter, Mr. Burns and Mr. Bovell, took the 117 cartons of watches out of the Ryder rental truck and put them into the paint truck and after the watches were in the paint truck Mr. Walsh directed everyone back to Lynbrook to the house of the house of the defendant, Janet Ferry, who will also be referred to as Janet Terri.

At Janet Ferry's house on the night of March 17, the boxes were unloaded again and placed into the basement of Janet Ferry's house.

You will also hear --

JUROR NO. 6: May I have some water?

THE COURT: Yes.

(Pause.)

MR. KIMELMAN: You will learn that on March 21,

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2 four days later, a Friday, that the defendant Walsh
3 and the defendant Ferry, Janet Ferry, went to the
4 Tick Tock Bar and talked to the bartender Schoenly
5 and they told him that Janet had arranged to rent a
6 truck and Schoenly was to go over, rent the truck in
7 his name and pick it up.

8 You will hear that Schoenly was given money;
9 that he went to a truck rental place in Lynbrook,
10 picked up a big van and according to the instructions
11 given to him, left the van on the street near Janet
12 Ferry's house.

13 You will learn that on the evening of Friday,
14 March 21, 1975, that Schoenly the bartender and the
15 defendant Walsh, and the defendant Bovell and the
16 defendant Freudigger seated over here met those
17 individuals at Janet's house; that the boxes were
18 taken from Janet's basement and placed into this rental
19 truck.

20 You will learn that Schoenly drove the truck,
21 placed the truck now loaded with the watches on a
22 street in Island Park.

23 You will also learn that on Monday, March 24,
24 1975, that William Joyce had a conversation with
25 Thomas Burns and told Burns that they needed a place to

1 store the watches and that Burns had a conversation
2 with another defendant named in the indictment but who
3 is not on trial, Leonard Nitti, and that on the evening
4 of March 24 Joyce and Burns went to the home of Leonard
5 Nitti in Lynbrook and that Joyce told Burns -- excuse
6 me -- told Nitti that if he could keep the watches for
7 two days he would receive \$1000 for the rental of his
8 garage and Nitti agreed to take the watches and the
9 watches were unloaded by Joyce, Burns and Nitti into
10 Mr. Nitti's garage.
11

12 You will learn that on that same day the defendant
13 Joyce and the defendant Walsh approached still another
14 defendant named in the indictment, Edward Boyle.

15 Mr. Boyle owned a bar on Long Island named
16 Boyle's and these two gentlemen, Joyce and Walsh,
17 approached Boyle about getting rid of the watches,
18 about fencing the watches for them and that Boyle
19 agreed to find someone to buy the Timex Watches.
20

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(Continued on next page)

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2 You will learn that on March 26, 1975, two
3 days later, Burns and Areiter went to Nitti's Garage
4 at the instructions of Joyce and took some of the
5 watches out to be used as samples in an attempt to
6 sell them.

7 You will learn on March 27, 1975, the next day,
8 that Mr. Boyle, Edward Boyle, got a call from someone
9 who said that he was interested in buying the watches
10 and a meeting was arranged for the afternoon of
11 Wednesday, March 27 for Mr. Boyle to meet this potential
12 buyer. However, little did Mr. Boyle know that this
13 potential buyer was a detective of the New York City
14 Port Authority Police Department by the name of
15 Giordano.

16 Detective Giordano, acting in an undercover
17 capacity, met with Mr. Boyle, the defendant Joyce, the
18 defendant Burns, in a bar in Queens.

19 Mr. Giordano agreed to buy the watches and
20 arrangements were made for delivery of half the
21 watches for that evening.

22 You will learn that on the evening of March 27,
23 1975, that Mr. Boyle met with the defendant Joyce and
24 with the defendant Burns and with another defendant
25 on trial here, James Grimsley, to go to Leonard

Nitti's.

You will hear from Mr. Boyle that he hired Mr. Grimsley to use his truck which was a large plumbing truck owned by Mr. Grimsley to pick up the watches from Nitti's Garage and deliver them to the meeting spot and that later on on the evening of March 27, Mr. Grimsley and Mr. Burns did go to Mr. Leonard Nitti's house, picked up half the watches and met Mr. Joyce and Mr. Boyle at a garage in Brooklyn and at that garage was Mr. Giordano and other members of the Port Authority Police Department.

Mr. Joyce, Mr. Boyle and Mr. Burns were arrested -- excuse me -- and Mr. Grimsley, were arrested with half the watches.

Finally, you will learn that a search warrant was obtained the next day for the garage of Mr. Nitti; that agents of the FBI executed that warrant and found the remaining watches still in Mr. Nitti's garage.

That essentially, in outlined form, is the testimony that you will hear from the witness stand over the next few days.

As I indicated to you, you will hear from Mr. Schoenly, from Mr. Areiter, from Mr. Burns, from

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2 Mr. Boyle, from Mr. Nitti, you will hear from Detective
3 Giorlano and you will hear from several agents of the
4 FBI as to what they did, what they said, what they
5 observed.

6 Along with the testimony of the witnesses, as
7 the Court indicated, there will be physical exhibits.
8 These exhibits will be the shipping documents and some
9 of the watches recovered and other exhibits.

10 Your job, ladies and gentlemen is to listen
11 carefully, as carefully as you can, to the testimony
12 from that chair and examine that testimony with an
13 open mind. Examine it keeping clear that no one witness
14 knows the whole story.

15 As I indicated to you in my outline, some
16 witnesses were present for some events and other
17 witnesses were present for other events. But, you
18 will see by the time the case is finished that each
19 witness' testimony fits into the other witness' testi-
20 mony and that you will have the whole entire picture
21 of what happened between March 17 and March 27, 1975,
22 perfectly clear in front of you and you will know the
23 exact involvement of each of these defendants on trial.

24 It is important, as the Court indicated, to keep
25 an open mind until the end of the case so you have the

entire picture in front of you.

Now, ladies and gentlemen, we don't anticipate that lengthy a trial. It will take at least several days to try it. Keep an open mind. Pay careful attention to what comes from that witness stand, what comes from Judge Platt in the way of instructions to you and I think if you can make that effort that justice -- all the ends of justice will be served by the end of this trial.

Thank you.

MR. VERDIRANO: Judge Platt, fellow defense counsel, Mr. Kimelman, Mr. Foreman and ladies and gentlemen of the jury.

My name is Vincent Verdirano and I represent William Joyce.

Before I go into what this case is about I'd like you to first understand that whatever I say or what any other attorney says, including remarks just made to you by Mr. Kimelman, are not evidence. The only evidence and facts you have to consider in this case is what you hear under oath from that witness stand, not what I say or feel, nor how anyone else feels. That is not evidence.

Mr. Joyce is before you on probably one of the

1 most important occasions of his life. He has been
2 charged with a crime, a very serious crime.
3

4 Mr. Joyce comes into this courtroom by way of
5 an indictment. I don't want you to think and believe
6 that because there is smoke there is necessarily fire.
7 Mr. Joyce wasn't before that Grand Jury. Other
8 witnesses went before that Grand Jury. I wasn't there.
9 I didn't cross examine them. The only attorney in the
10 Grand Jury room was the U.S. Attorney. Defense counsel
11 are not there. So, this charge comes from witnesses
12 that are friendly to the Government.

13 As a matter of fact, you are going to hear five
14 men get on that stand because they made a deal. The
15 other defendants in this case, more specifically,
16 Mr. Joyce, have pled guilty -- not guilty, as everyone
17 else has.

18 The persons that will testify against them have
19 a motive. They apparently were involved in something
20 so they put other individuals into it that possible
21 circumstances could make out to be part of a crime.
22 I tell you, simply circumstances.

23 John F. Kennedy Airport is a big place. We do
24 not deny that Mr. Joyce works there and the testimony
25 will show that. We do not deny that he was in John F.

1 Kennedy Airport. But, it's a big place. Theft happens
2 there every day --

3
4 MR. KIMELMAN: Your Honor, Mr. Verdirano is
5 testifying now.

6 MR. VERDIRANO: No, I'm not.

7 THE COURT: I assume that you will back up the
8 fact that John F. Kennedy is a big place.

9 MR. VERDIRANO: I think the Court can take
10 judicial notice of that, Judge.

11 I want you, as you look at these witnesses --
12 I want you to judge them, not as the United States
13 Attorney would want you to judge them or I would want
14 you to judge them but as you would judge them by going
15 into your background.

16 For instance, would you men play cards with
17 these fellows?

18 You women, would you invite them into your
19 homes, have them at your social functions?

20 Look at them for what they are and what they
21 have done.

22 Look at the proofs in this case. Look at how
23 they are elicited. Remember, I as defense counsel
24 have not seen these people nor interviewed them. I
25 have no idea what they are going to say and everything

1 they have said has not been subject to cross-examina-
2 tion until this day. So, I don't know what they are
3 going to say nor do I know how truthful it is. But,
4 I ask you to look behind it as to their motive and
5 method. They made a deal. Each of these men has
6 already pled guilty to this indictment and I am positive
7 when you hear all the testimony from these people as
8 it is subject to cross-examination by various defense
9 counsel, you will have to come to the conclusion as
10 I have that Mr. Joyce is not guilty.

11 Thank you.

12 MR. CORBITT: Judge Platt, Mr. Kimelman,
13 colleagues for the defense, Mr. Foreman and ladies and
14 gentlemen of the jury:

15 I represent Donald Walsh. He is the only one
16 I represent. When I am on my feet in this case, as
17 the case goes on, it is on behalf of Donald Walsh.

18 I mention that because we have seven trials
19 going on here at once. For purposes of convenience,
20 all of these seven defendants are being tried and I
21 ask you -- and Donald Walsh has this right -- to put
22 a separate compartment in your mind for each defendant.
23 I am interested that you put a compartment there and
24 label it "Donald Walsh," and consider whatever evidence
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there is and give him a separate trial to which he is entitled.

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One thing further, as Judge Platt will instruct you, as Donald Walsh sits here, he is presumed innocent and the burden is on the Government to prove him guilty to your satisfaction beyond a reasonable doubt. Donald Walsh doesn't have to prove anything.

So, you wonder what I am doing standing here? Do I just like to talk? Sure, I like to talk but I want you to know that the Government has that obligation and that Donald Walsh has no obligation to prove anything.

Donald Walsh has chosen me to be his lawyer and in effect made me the captain of his ship and I will make the decisions for him and in the course of the trial if he does or does not do something you feel he should have done or not done, then take out your resentment on me because I made the decision for him.

As both learned counsel told you in their openings what lawyers say is not evidence. Evidence comes from the witness stand, both direct and cross-examination.

I am not going to touch at all on the facts or what we will put forth on behalf of Donald Walsh in

1 this case, but I will say to you that at the conclu-
2 sion of this trial I will again have the opportunity
3 to come before you and discuss the evidence that has
4 been put in against Donald Walsh and at that time I
5 will come to you and tell you that the Government has
6 failed to prove Donald Walsh guilty beyond a reason-
7 able doubt and I will ask you for a verdict of acquittal.
8

9 Thank you.

10 MR. O'BRIEN: May it please the Court, fellow
11 counsel, ladies and gentlemen of the jury:

12 After G.K. Chesterton had served on a jury he
13 wrote the following:

14 Our civilization decided and justly decided
15 that determining the guilt or innocence of a man is a
16 matter too important to be left to trained men.

17 When it wants light on certain matters it asks
18 men who know no more than I.

19 When it wants a solar system analyzed or a
20 library cataloged it uses specialists. But, when what
21 it wants done is really important it asks 12 men and
22 women standing about.

23 I believe the same was done by the founder of
24 Christianity.

25 You are going to have to make that awful

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2 determination at the end of this trial. You will have
3 to determine whether or not my client is guilty or
4 innocent.

5 The Government has the burden of proof. My
6 client need not prove anything. The Government must
7 prove his guilt beyond a reasonable doubt and if it
8 does not, it is your sworn duty to vote a verdict of
9 not guilty.

10 It has been said before but my client also,
11 James Grimsley, has a right to a separate verdict.

12 Mr. Grimsley, you will learn, does not even know
13 any of the other defendants sitting on this trial.
14 He does know some of the defendants that will testify
15 but he met only one or two of these defendants at
16 defense table on the night he was arrested and never
17 knew them prior to this time.

18 The Court tells you there are two sides to
19 every story. The Government has the right to present
20 their side first. That's the way our justice system
21 works. That is one of the reasons they say that a
22 defendant is presumed innocent and that that presump-
23 tion lasts with him throughout the entire trial right
24 up to and including your deliberations.

25 The presumption of innocence is the very

foundation upon which our whole system of criminal justice works and it does work. But, there are two sides to every story and I ask you very strongly, please, do not form any opinion. If you form an opinion in your own mind when you hear only one side of the story, it is so much more difficult for us to try and change your opinion.

You are all intelligent human beings. I know it is difficult. You have to fight against that strong probability or that strong urge to form an opinion. Please don't do it.

What is even worse, or what would be even worse, is if you were to express that opinion to someone else. If you said, after hearing only some of the evidence, "I think that person is guilty" then -- just as human beings -- it is hard to come back and say, "I was wrong."

Sometimes people -- I hope not you -- people will stick to an opinion even if they are wrong. Please do not form an opinion.

Mr. Grimsley isn't required to testify in this case. He is a defendant and no defendant is required to testify. Defendants have the right to rely on the Government's failure of proof. But, he will testify

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and you will learn that he is just a working stiff;

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works every day, always has jobs and didn't get

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involved in anything he thought wrong.

5

The only thing that the Government has said

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about Mr. Grimsley during his opening statement was

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that Mr. Boyle hired Mr. Grimsley to pick up these

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boxes and that is true.

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(Continued on next page.)

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2 MR. O'BRIEN: (Continuing.) Mr. Boyle called
3 Mr. Grimsley and told him or asked him if his
4 truck was empty or if he had his truck available.

5 Mr. Boyle knew Mr. Grimsley because
6 Mr. Grimsley is a plumber and he did work at
7 Mr. Boyle's bar -- a valve or a boiler -- a valve
8 on a boiler, I believe.

9 A couple of weeks after this he went there
10 as a patron and then he received a phone call and
11 Mr. Boyle said to him, "Do you want to make yourself
12 a few bucks?" He replied, "Doing what?" And
13 Mr. Boyle said, "I want you to pick up some
14 merchandise. I'll meet you at this place."

15 Mr. Grimsley did that. So, we don't dispute
16 what the government has said.

17 What we do dispute is that Mr. Grimsley did
18 not know those goods were stolen. In fact,
19 Mr. Grimsley did not even know what the goods were.
20 The only thing Mr. Grimsley could be guilty of is
21 stupidity and error in judgment. But, he did not
22 know that those goods were stolen and I feel you
23 will be convinced of that at the end of this trial --
24 certainly, if not convinced, you will have a
25 reasonable doubt at the end of the trial.

2 1
2 All I ask you to do during this trial is
3 be fair and evaluate Mr. Grimsley's case as well
4 as every one of the other defendants separately.
5 They are all entitled to separate trials.

6 There is going to be a lot of evidence during
7 this trial permissible against possibly one defendant
8 but nothing to do with the other defendants. There
9 are a series of dates here, the 17th, 21st and 24th
10 and finally the 27th and Mr. Grimsley had nothing
11 to do with any date other than the 27th and there,
12 he was just trying to make a few extra bucks by
13 driving goods that he did not know were stolen.

14 Thank you.

15 MR. KAPLAN: If your Honor please,
16 Mr. Kimelman, gentlemen, Mr. Foreman, and ladies
17 and gentlemen of the jury:

18 My name is Marshall Kaplan and I represent
19 Janet Ferry -- Mrs. Janet Ferry whose maiden name
20 is Terri.

21 Now, I have the distinction of representing
22 the only woman at the trial so you will be able to
23 figure out who I am in the crowd we have at the
24 table.

25 I would like to repeat to you again that the

3 1

Kaplan-opening

2 convention of a criminal trial has put fourteen of
3 us at that table and two people over here.

4 The government elected -- didn't have to do
5 it -- to name a bunch of people in the indictments.
6 Seven people are left on trial.

7 Because of the physical nature of the room
8 and the conventions of law, the government has one
9 table and everyone else has another table. That
10 doesn't mean we chose to sit together or even that
11 we wanted to. I am sure every one of us would like
12 a separate table and we would like you all to
13 remember during the trial that the fact that we are
14 sitting together does not mean we have unity of
15 interest. It doesn't mean that I'm interested in the
16 outcome of Mr. Corbitt's client nor Mr. O'Brien's
17 client nor is anyone necessarily interested in the
18 outcome of my client, Mrs. Ferry.

19 Mrs. Ferry as every individual in the case
20 is entitled to have you -- I am sure the judge will
21 tell you this emphatically -- to have the facts
22 considered only as to her as far as her guilt or
23 innocence is concerned and the same holds true with
24 every other defendant here.

25 The reason I want to make sure to emphasize

4 1
2 that for the third time-- and it has been said ably
3 before -- is that you heard from the opening, the
4 government accuses various people of doing various
5 things with respect to what must have been a very
6 heavy load of watches, seventeen or 117 cartons of
7 watches which the government charges was taken from
8 John F. Kennedy Airport and moved around in various
9 locations out on the island.

10 It is obviously impossible -- and it has not
11 been charged -- that my client who is a relatively
12 small woman muscled any of these cartons around,
13 took them from John F. Kennedy, transferred them from
14 one truck to another, put them in a garage or
15 physically moved them to a basement or a warehouse.
16 The government hasn't charged her with any of that
17 and I think the proof will show later on that when
18 most of the critical events occurred, she wasn't
19 in New York City or even in the vicinity of
20 New York City.

21 So, we are told by the government from
22 Mr. Kimelman's opening that what she is charged
23 with is that she supposedly or allegedly was
24 present when a bartender was told to rent a truck
25 and allegedly these cartons were in her house which

1 I think the proof will show you, if it comes to
2 that, if it becomes necessary for her to show
3 anything, it was a house in which she resided which
4 was owned by her parents.
5

6 You have been told before and I think it is
7 probably not inappropriate to emphasize it, that
8 no defendant has the obligation of proving anything.

9 The defendant doesn't have to take the stand,
10 call witnesses or produce evidence.

11 The defendants are hailed into this Court
12 by actions of the United States government.

13 The Constitution of the United States says
14 they can require the government to prove they are
15 guilty by competent evidence to a jury of their
16 peers beyond a reasonable doubt.

17 This woman, this defendant has come here
18 in pursuance of her constitutional rights. She has
19 plead not guilty and said to the government of the
20 United States, "You have accused me of committing
21 crimes in violation of the laws of the United States
22 and I want to put you through your proof which the
23 Constitution of the United States requires you
24 satisfy and produce."

25 I am confident that at the end of this trial

6 1
2 you will find that the government has not satisfied
3 the requirements the Constitution of the United
4 States has put upon them and I will therefore ask
5 you to find this defendant not guilty.

6 Thank you.

7 MR. SPERLING: Judge Platt, my colleagues,
8 Mr. Kimelman, Mr. Foreman, and ladies and
9 gentlemen of the jury:

10 You have heard from a number of my colleagues
11 and I am not going to go over just what has to be
12 done.

13 I represent Louis Bovell.

14 Louis Bovell -- I wouldn't call him a working
15 stiff -- he is a hard working man and all you will
16 hear about Louis Bovell in this case is that Louis
17 Bovell muscled some packages at the behest of
18 somebody else.

19 You will not hear, I dare say, one word from
20 anybody that Louis Bovell knew he was muscling
21 around goods stolen from any interstate shipment,
22 let alone that the goods were stolen at all.

23 Louis Bovell is entitled, as you will be
24 informed by Judge Platt, to that curtain of
25 innocence, that presumption.

Sperling-opening

It is nothing to laugh at. Just as Mr. Kimelman here is a representative of the United States government and perhaps appears as a representative of the United States government, that isn't what has to be proven here.

What Mr. Kimelman has to prove and beyond a reasonable doubt, is that Louis Bovell knew, knew that these particular boxes that he muscled around on one or two occasions were stolen. I don't think the government is going to meet that test.

I ask you to listen particularly carefully for anything or any bit of testimony which will indicate -- I am not asking you to suppose -- and perhaps Mr. Kimelman will hope that you suppose -- that just because Mr. Bovell did muscle some cases because he used his shoulders and strength that that is sufficient beyond a reasonable doubt because every essential element of this case of this charge has to be proven.

The government isn't going to prove that Louis Bovell knew these watches were stolen. The government will be put to the task and I dare say when you hear all the evidence you will believe, as I believe and come in with a verdict of not guilty

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for Louis Boveall.

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MR. AXELROD: Judge Platt, fellow counsel and ladies and gentlemen of the jury.

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My name is Charles Axelrod and I represent the defendant John Freudiger. I am being assisted in this trial by Paul Warburg who is not present this afternoon in that he is engaged in another matter. However, Mr. Warburg will appear on behalf of Mr. Freudiger later on in the trial.

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16

I mention this to you now, ladies and gentlemen, because Mr. Warburg will not have the opportunity to be formally introduced to you and I would like you to associate his name with that of his client, John Freudiger when he addresses the Court or when he is addressed by the Court.

17

18

19

I would like to make it very clear at this time that John Freudiger is the only defendant I represent in this case.

20

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24

Very often during the trial there will be testimony as to other defendants and although a conspiracy is alleged in this case, I will have little interest in that testimony. Why? Because my main concern is my client, John Freudiger.

25

There may be long periods of time when either

1
2 Mr. Warburg or myself will sit and listen and when
3 addressed by the Court, "Mr. Axelrod, do you have
4 any questions of this witness" I will answer, "No."
5 Why? Because the witnesses have testified to little
6 or nothing concerning John Freudiger.

7 There are a lot of defendants in this case
8 ladies and gentlemen and a lot of lawyers and you
9 are going to hear a lot of names.

10 Let me assure you within a few days you
11 will be able to associate each defendant with his
12 counsel and each counsel with his client.

13 It is very important that you learn who the
14 defendants are and what their names are because the
15 day will come when you will go back to the jury
16 room after all the evidence is in and the Judge has
17 charged you and all the arguments are made and you
18 will have to determine the guilt or innocence of
19 each of these defendants separately, not lumped
20 together, not as a mass of evidence but you will
21 have to sit there and coolly deliberate as to each
22 defendant and say to yourselves, "What did the
23 government prove as to John Freudiger?"

24 So, as you are listening to this case and
25 as you listen to arguments at the end of this case

1
2 and as you deliberate, you are actually trying
3 several different cases, you are actually
4 determining the guilt or innocence of several
5 defendants, several individuals who are on trial
6 before you today.

7 I have confidence you will carry out that
8 duty to the best of your ability. You have sworn
9 that you will be unbiased, that you will not favor
10 either the government or defense and that you will
11 hear the evidence and determine the guilt or
12 innocence of each of these defendants from the
13 evidence alone.

14 The burden is on the government to prove as
15 to each one of these defendants beyond a reasonable
16 doubt that they were members of this conspiracy and
17 that they committed the crimes charged in the
18 indictment.

19 Thank you.

20 (Continued next page.)
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Maltese-opening

MR. MALTESE: Judge Platt, defense counsel,
Mr. Kimelman, Mr. Foreman, ladies and gentlemen of the
jury:

My name is Carl Maltese. My client is Morton
Hanan, the gentleman over here.

Mr. Hanan has been charged in this indictment
of conspiracy with a number of individuals to possess
stolen property, receive and possess it.

In count 2 he is charged with actually receiving
the stolen property.

My distinguished colleagues made a point of
mentioning to you the burden or presumption that
every defendant has when he walks into court.

Every defendant in this nation charged with a
crime is presumed to be innocent and if during the
course of a trial or hearing nothing is said the
defendant must be released because it is the burden and
obligation of the People or the Government to prove an
individual guilty beyond a reasonable doubt.

What this beyond a reasonable doubt is will be
better explained to you by the Judge. However, an
individual charged with a crime or accused need do
absolutely nothing. He has no obligation to testify.
He has no obligation to call witnesses, no obligation

Maltese-opening

to produce any evidence. It is the People's burden to prove the individual guilty beyond a reasonable doubt.

Now, not every country has this system. In some places you are guilty until you prove yourself innocent. However, in the United States any defendant is presumed to be innocent until the People proves they are guilty beyond any reasonable doubt.

Mr. Kimelman, in his opening statement, indicated that this van or truck which supposedly contained the watches was, at one period of time, in a garage owned by Mr. Hanan's father.

He further stated that at this particular garage one of the co-defendants had a conversation with Mr. Hanan.

It is going to be the obligation and the burden of the People or the Government to show that Mr. Hanan did conspire with others to obtain and possess stolen property and did actually come into or did possess stolen property.

As I say, a defendant does not have to take any step in his defense. It is completely up to the People to show that a defendant is guilty beyond a reasonable doubt.

However, Mr. Hanan will not sit by idly even

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Maltese-opening

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2 though he is convinced the People cannot show he did
3 these crimes -- he will go forward and show, through
4 testimony and evidence, that there is no possible way
5 that he ever knew these articles were stolen and that
6 he never did conspire with anyone to gain possession
7 of these articles.

8 I ask you, ladies and gentlemen, to please
9 give the same attention to my witnesses that you did
10 give assurances to my colleagues that you would give
11 to their witnesses and I am convinced at the end of
12 this case it will be clear that Mr. Hanan's involve-
13 ment in this matter was one of only a businessman who
14 operated a garage, that did some repair work on this
15 truck and that there is no relationship established at
16 all to indicate that Mr. Hanan is guilty of the crime
17 charged.

18 Thank you.

19 THE COURT: Come to the bench, gentlemen.

20 (Side bar discussion between Court and counsel
21 as follows:)

22 THE COURT: We have got about half an hour --

23 MR. KIMELMAN: I just sent my witness home.

24 THE COURT: All right. Mr. Axelrod asked we
25 adjourn until tomorrow, anyway. I didn't anticipate

1
2 you would be that brief.

3 MR. O'BRIEN: I join in the application to
4 adjourn until tomorrow morning.

5 THE COURT: I hope you avail yourselves of this
6 time to go and listen to the tapes or whatever is
7 necessary.

8 MR. O'brien; I do have a rather important
9 meeting that I'd like to attend as quickly as possible
10 and the persons won't be there after five.

11 I would like an opportunity at another time to
12 listen to the tapes.

13 MR. KIMELMAN: The tapes involve Boyle and
14 Giordano. I don't anticipate either of the witnesses
15 getting on the stand before Thursday.

16 MR. O'BRIEN: Fine.

17 (Conclusion of side bar discussion.)

18 (The following held in open court.)

19 THE COURT: Now, ladies and gentlemen, because
20 of the scheduling difficulties, I indicated to counsel
21 earlier that we would probably only get to opening
22 statements this afternoon and the Government witnesses
23 were let go earlier in the day and advised they would
24 not have to be here until tomorrow morning. The
25 result is we are going to suspend now until tomorrow

1
2 morning at ten o'clock.

3 The procedure to follow is as follows: At a
4 quarter to ten you should check in downstairs at the
5 Central Jury Part and make sure that you record your
6 presence because if you do not you won't be paid and
7 as small as it is, it is worthwhile getting paid.

8 Then, come up in the elevator, come into the
9 backdoor and into the jury room.

10 We will start promptly at ten o'clock, assuming
11 I do not get diverted off to something else which I
12 try not to do when I have a jury waiting.

13 When we start tomorrow morning you will hear
14 the first witness and evidence in the case.

15 In the meanwhile, I want you to remember what
16 has been said to you: Do not discuss this case with
17 anyone, keep your own counsel and we will see you
18 tomorrow morning.

19 (Court adjourned to January 21, 1976.)

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[75]

86a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D. NY

JAN 23 1976

UNITED STATES OF AMERICA,

-against-

WILLIAM J. JOYCE, DONALD WALSH,
EDWARD J. BOYLE, THOMAS M. BURNS,
JAMES GRIMSLEY, LEONARD NITTI,
JANET TERRI, also known as
Janet Perry, ROBERT SCHOENLY,
PETER AREITER, LOUIS BOVELL,
JOHN FREUDIGER and MORTON HANAN,

Indictment No.
75-CR-488

Defendants.

United States Courthouse
Brooklyn, New York

January 20, 1976
10:00 o'clock A.M.

Before:

HONORABLE THOMAS C. PLATT, U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

46A

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U.S. Attorney

VINCENT VERDIRAMO, ESQ.
Attorney for Defendant Joyce

JOHN C. CORBETT, ESQ.
Attorney for Defendant Walsh

THOMAS O'BRIEN, ESQ.
Attorney for Defendant Grimsley

MARSHALL KAPLAN, ESQ.
Attorney for Defendant Terri

WILLIAM H. SPERLING, ESQ.
Attorney for Defendant Bovell

CHARLES AXELROD, ESQ.
-and-
PAUL WARBURGH, ESQ.
Attorney for Defendant Freudiger

CARL MALTESE, ESQ.
Attorney for Defendant Hanan

MPHb 1/1

1 THE CLERK: FBI report marked 3500-1.

2 Interview of Robert Schoenly, marked 3500-2.

3 3500-3, interview of Robert Schoenly, again.

4 3500-4, Grand Jury minutes.

5 (Above documents marked for Identification.)

6 MR. CORBITT: I have an application, your
7 Honor. Tomorrow morning at 9:30 I must be across
8 the hall in Judge Bartel's Part to set a trial date.
9 I anticipate I will be here by 10:00.

10 However, I am concerned about being late and
11 I spoke to Mr. O'Brien and my client and with the
12 Court's permission, in the event I am late --

13 THE COURT: I will send a Marshal over to get
14 you.

15 MR. CORBITT: I realize that. I want to save
16 the Marshal the trip, so if it is all right with the
17 Court --

18 THE COURT: I will talk to Judge Bartels to make
19 sure he doesn't hold you in contempt.

20 MR. CORBITT: I will go there at 9:30 tomorrow.

21 (A recess was taken at this time while the
22 Court attended to another matter.)

23 THE COURT: Bring in the jury.

24 (The jury entered the jury box.)
25

THE COURT: Good morning, ladies and gentlemen.

I am sorry for the brief delay. We are ready now.

MR. KIMELMAN: The Government calls Robert Schoenly.

ROBERT SCHOENLY, a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Schoenly, how old are you?

A Thirty-four.

Q Are you married?

A Yes.

Q How long have you been married?

A Only a couple of months.

Q Where do you live?

A Rosedale.

Q Mr. Schoenly, what is your present occupation?

A Sheet metal mechanic. I was prior a bartender in the Tick-Tock --

MR. WARBURG: Can you ask the witness to speak up?

THE COURT: Yes.

Ladies and gentlemen, that is Mr. Warburg. You weren't introduced to him yesterday but I said he would

[79]

Schoenly-direct

90a

be here today.

Please keep your voice up so they can all hear you.

THE WITNESS: Yes.

Q You just indicated that you worked at the Tick-Tock. What is that?

A That is a cocktail lounge in Lynbrook.

Q How long were you the bartender at the Tick-Tock?

A Approximately a year and a half.

Q When did you leave your employment at the Tick-Tock?

A Approximately two months ago.

Q While working at the Tick-Tock, did you have any other jobs?

A No. Yes, excuse me, I did work part-time at Boyle's Lounge in Rosedale.

Q Is that another bar?

A Yes.

Q Mr. Schoenly, I draw your attention to the morning of March 17, 1975. Where were you on that morning?

A Where was I?

Q Yes.

A I opened up the bar.

THE COURT: Which bar?

1 [80]
2 THE WITNESS: Approximately 10:15, 10:30.

3 THE COURT: Which bar?

4 THE WITNESS: Tick-Tock.

5 MR. WARBURG: I move to strike the answer as
6 not responsive.

7 THE COURT: What?

8 MR. WARBURG: I believe the question was where
9 was he.

10 THE COURT: He said he opened up the bar at that
11 point.

12 MR. WARBURG: I don't believe it's responsive.

13 THE COURT: I believe it is responsive, over-
14 ruled.

15 Q Approximately what time did you open up the
16 bar?

17 A Approximately 10:15 to 10:30.

18 MR. KIMELMAN: Your Honor, may we mark this as
19 the Government's first exhibit?

20 THE COURT: For Identification?

21 MR. KIMELMAN: Yes, for Identification.

22 THE COURT: Yes. Do you want the Clerk to go
23 over there?

24 MR. KIMELMAN: I think it would be easier if
25 the Clerk came over here.

THE CLERK: One map marked for Identification
as Government's Exhibit 1.

(So marked.)

THE COURT: Before you start going into that,
does any defendant have any objection?

MR. KAPLAN: What is it a map of?

THE COURT: It looks like Brooklyn and Nassau
County, Queens.

MR. KIMELMAN: Very good, your Honor.

THE COURT: I don't know. I haven't seen it
, before, either.

Q Mr. Schoenly, could you indicate on Government's
Exhibit 1 where the Tick-Tock Bar is?

A It's right here (indicating).

Q That is in Lynbrook?

A Yes.

Q After you opened the bar on the morning of
March 17, 1975, did anyone come to the bar?

A Yes, William Joyce came in.

Q Do you see William Joyce in the courtroom today?

A Yes.

Q Would you indicate where he is seated and what
he is wearing?

A The second gentleman there in the dark blue suit

(indicating).

MR. VERDIRAMO: It's stipulated it's William Joyce.

Q Prior to March 17, 1975, how long had you known William Joyce?

A Approximately a year and a half. All the time I worked at the Tick-Tock.

Q How did you know him?

A He was a regular customer there. We were on a friendly basis. We socialized together.

Q On the morning of March 17, 1975, what time did William Joyce arrive at the Tick-Tock?

A Approximately 10:30.

Q When he arrived, did you have a conversation with him?

A Yes.

Q Would you relate what the conversation was, what you said and what he said?

A Joyce told me that he made a hit at the airport. He had taken a commodity from the airport and had it in a truck.

Q What did you say?

A (No response.)

Q Did you respond at all to that?

1 [83] Schoenly-direct 94a
2 A Well -- he told me about that, and I guess
3 there wasn't much else said.

4 Q Did he tell you anything else at that time?

5 A At that time, no. Just that he had something
6 and it was on a truck.

7 Q After William Joyce arrived at the bar, did
8 anyone else arrive at the bar?

9 A Peter Areiter came in at approximately 10:45.

10 Q Who is Peter Areiter?

11 A He's another patron of the bar.

12 Q How long have you known Peter Areiter?

13 A Approximately the same time, year and a half,
14 on a friendly basis, also.

15 Q Did Areiter have a conversation with anyone?

16 A With William Joyce.

17 Q Did you hear any part of that conversation?

18 A Yes, I did. William Joyce asked Peter Areiter
19 to drive someone to the airport and Areiter agreed to and
20 then he left shortly after.

21 Q Who left?

22 A Areiter, to drive someone to the airport.

23 Q Did there come a time when Mr. Joyce left the
24 bar?

25 A Yes.

1 [84] Schoenly-direct 95a
2 Q When did that occur?

3 A Approximately an hour later.

4 Q While Mr. Joyce was gone did still another
5 individual come into the bar?

6 A While Mr. Joyce was gone?

7 Q Yes.

8 A Yes, his cousin Donald Walsh.

9 Q Do you see him in the courtroom?

10 A Yes, sitting on the end in a blue jacket with
11 a blue tie and blue shirt.

12 MR. CORBITT: Identification conceded.

13 Q How long had you known Donald Walsh?

14 A Him, approximately seven years.

15 Q How would you characterize your relationship
16 with Donald Walsh?

17 A Friendly, we socialized. He was a patron of the
18 bar also.

19 Q When Donald Walsh came into the bar, did you
20 have a conversation with him?

21 A Yes.

22 Q What was the conversation you had with Donald
23 Walsh?

24 A I told him that his cousin had gotten something
25 from the airport. He said he had wished that his cousin had

1 waited for him to arrive because he knew a place where he
2 could put the stuff.
3

4 Q While you were conversing with Donald Walsh,
5 did Joyce come back to the bar?

6 A I'm trying to think. No, he came back after-
7 wards.

8 Q Approximately what time did Joyce come back to
9 the bar?

10 A I would say approximately 1:00.

11 Q Was Walsh still there or not?

12 A I don't know if he was there or came back after
13 Joyce came back. They came in near the same time. I don't
14 remember whether it was -- which one came in first.

15 Q Did you observe them together at any time
16 that afternoon?

17 A Yes.

18 Q Do you recall approximately when that occurred?

19 A Approximately 1:00, 1:30 in the afternoon.

20 Q Did you hear any discussions between Donald
21 Walsh and Bill Joyce on that afternoon?

22 A On that afternoon, no.

23 Q Now, did anyone else come into the bar in the
24 afternoon of March 17th?

25 A Thomas Burns.

1 [86] Schoenly-direct 97a
2 Q Who is Thomas Burns?

3 A Another patron of the bar. Another friend of
4 mine.

5 Q How long do you know Thomas Burns?

6 A Approximately a year and a half.

7 Q Did you observe Thomas Burns in conversation
8 with anyone during that afternoon?

9 A With Joyce and Walsh.

10 Q Were you able to hear any of their conversa-
11 tions?

12 A No, I wasn't.

13 Q Mr. Schoenly, on March 18 and 19th and 20th,
14 did you happen to see Donald Walsh or Bill Joyce over those
15 days?

16 A Yes, they were in a few times talking together.

17 Q Did you have any conversations with either of
18 those two men during those two days?

19 A Yes. At that time they had found out that --
20 MR. VERDIRAMO: Objection, your Honor.

21 THE COURT: Don't tell us what they found out,
22 tell us what they said.

23 A Joyce told me that the shipment was Timex
24 watches.

25 Q What else did he tell you?

A They were trying to sell the shipment but they were having a little difficulty finding a buyer.

Q Do you recall any other conversations you had with Mr. Joyce or Mr. Walsh?

A I can't think of any offhand.

Q Friday, March 21, 1975, did anyone come into the Tick-Tock Bar?

A Yes.

Q Who came into the bar?

A Donald Walsh and Janet Terri.

Q Do you see Janet Terri in the courtroom?

A Yes, the blond at the table.

MR. KIMELMAN: Indicating the defendant, your Honor.

THE COURT: Yes.

Q Had you met Janet Terri prior to March 21, 1975?

A Yes.

Q How do you know Janet Terri?

A I know her approximately a year and a half, she was a barmaid at the Tick-Tock when I was first employed there.

Q Approximately what time did you see Donald Walsh and Janet Terri on that afternoon?

A I believe approximately 2:00.

Q Did you have a conversation with those two individuals?

A Yes.

Q What did you say and what did they say?

A Walsh asked me if I would rent a truck from Hub Rental. He wanted to move the shipment from where it was.

At that time, I didn't know where it was. I was instructed to go to Hub Rental --

MR. KAPLAN: Can we know who instructed him?

THE COURT: He said Walsh.

A Walsh instructed me to go to Hub Rental and rent a step-in van. Hub Rental had been called by Janet Terri to see if they had that type of van that Walsh wanted.

MR. KAPLAN: Can we find out if this is his conclusion or is this a conversation?

THE WITNESS: This was what was told to me.

MR. KAPLAN: By whom?

THE WITNESS: Walsh.

MR. KAPLAN: I object.

THE COURT: He said this is a conversation he had with Walsh.

MR. KAPLAN: I ask for an instruction to the jury that none of this is binding on Terri.

1 THE COURT: If she is there --

2 MR. KAPLAN: I don't know.

3 THE COURT: She came into the bar with him?

4 THE WITNESS: Yes.

5 THE COURT: She was standing there when the
6 conversation went on?

7 THE WITNESS: Yes.

8 THE COURT: Go ahead. He said to rent a step-
9 in van?

10 THE WITNESS: Right.

11 THE COURT: And Terri had called?

12 THE WITNESS: Had called and said that when I
13 go down say it's my sister that called and I should
14 rent a truck.

15 Walsh gave me \$100 deposit to put on the truck
16 for the rental.

17 (Continued on next page.)

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[90]

Schoenly-direct

101a

Q Now, is that the end of the conversation?

A No.

Q Go ahead.

A Well, that conversation, yes. Then I left.

Q Where did you go?

A I went to Hub Rental.

Q Where are they located?

A Merrick Road in Lynbrook.

Q Can you indicate to us on Government's Exhibit 1
the location of Hub Rental.

A Yes. Right here (indicating).

MR. KAPLAN: Can we have the street or map
coordinance?

THE COURT: Start with Tick Tock. What street
is that?

THE WITNESS: 44 Stauderman Avenue, Lynbrook.

THE COURT: How many blocks away and what corner
is Hub Rental?

THE WITNESS: Hub Rental is approximately eight
blocks on Merrick Road. Between Watkins Street and
Park Place.

THE COURT: Okay.

Q When you got to Hub Rental, what happened?

A I told him that my sister had called about the

van. When I was filling out the sheets I was told I needed \$175 deposit.

MR. WARBURGH: Objection and move to strike the answer.

THE COURT: Strike out what he was told.

You can't tell us what you were told by Hub Rental, that is hearsay. Disregard that last statement.

THE WITNESS: How do I answer that?

Q Were you able to rent the truck?

A No, I needed an additional \$75.

Q What did you do?

A I went back to the Tick Tock and received from Walsh and Terri an additional \$75.

Q You received the money from both of them?

A Both of them, yes.

Q Do you remember how much each contributed?

A No, I don't.

Q After you got the additional \$75, what did you do?

A I went back to Hub Rental, rented the truck, drove the truck on to Denton Avenue around the corner from Janet Terri's house.

Q What kind of truck did you rent?

A A gray step-in van.

Q Approximately how many feet long was it, if you

2 recall?

3 A Sixteen. I really don't know.

4 Q Do you remember what color it was?

5 A A silver or a gray.

6 MR. KIMELMAN: Your Honor, may I mark this as
7 Government's Exhibit 2?

8 THE COURT: Yes.

9 THE CLERK: Truck rental certificate marked for
10 identification as Government's Exhibit 2.

11 (So marked.)

12 Q Mr. Schoenly, I show you what has been marked as
13 Government's Exhibit 2 and ask you if you can identify it?

14 A This is the rental agreement I signed at Hub
15 Rental.

16 Q Do you see your signature on the rental form?

17 A Yes, I do. That is my signature (indicating).

18 MR. KIMELMAN: Your Honor, I offer Government's
19 Exhibit 2 in evidence.

20 MR. VERDIRAMO: In behalf of Mr. Joyce, no
21 objection.

22 THE COURT: I beg your pardon?

23 MR. VERDIRAMO: I'm sorry. In behalf of Mr.
24 Joyce, no objection.

25 MR. KAPLAN: No objection.

MR. CORBETT: No objection.

MR. O'BRIEN: No objection.

MR. SPERLING: No objection.

MR. WARBURGH: No objection on behalf of
defendant Freudigger.

MR. MALTESE: No objection in behalf of the de-
fendant Hanon.

THE COURT: Received.

THE CLERK: So marked Government's Exhibit 2 in
evidence.

(So marked.)

Q You indicated after you rented the truck you
took it someplace?

A I parked it around the corner from Janet Terri's
on Denton Avenue.

Q Could you indicate on the map where you parked
the truck on that afternoon?

A On Denton Avenue, right here (indicating).

MR. WARBURGH: Can we have a time for this?

THE COURT: What time, approximately?

THE WITNESS: Approximately 4:00 o'clock in the
afternoon.

Q After you dropped the truck off there, what did
you do?

1 A I had parked my car in the area between where I
2 was going to park the truck and Hub Rental. I walked to my
3 car, went back to the Tick Tock Bar, back to work.

4 Q Was Donald Walsh and Janet Terri still at the
5 Tick Tock when you got there?

6 A Yes.

7 Q Did you have a conversation with either of those
8 two at that time?

9 A Walsh told me that he was going to move the
10 shipment at 7:00 o'clock when I got off work and not to say
11 anything about it to his cousin.

12 Q Did he indicate to you why you shouldn't --

13 MR. VERDIRAMO: Objection. Mr. Walsh was not
14 there.

15 THE COURT: Walsh said this to him.

16 MR. VERDIRAMO: This is what Mr. Walsh said
17 based on some reference to my client. It's all subject
18 to connection at this point.

19 THE COURT: Anything that Walsh said to him at
20 this point can be admitted even though it may also involve
21 your client in view of what the testimony has been.
22 You have a conspiracy count here.

23 MR. VERDIRAMO: There has been no conspiracy formed
24 here, Judge.
25

THE COURT: That is ultimately for the jury to determine.

Q Did Mr. Walsh give you a reason why you should not tell Mr. Joyce the shipment was moved?

A He didn't want his cousin Joyce to know he was moving it. He was worried if Joyce was picked up they might be able to locate the shipment, say where it was.

Q Did you go back to the Tick Tock or were you at the Tick Tock approximately 7:00 p.m. that evening?

A Yes, I was. That is the time I get off work.

Q This was on March 21st, is that correct?

A Yes.

Q What happened approximately 7:00 p.m. on March 21st?

A At 7.00 o'clock when I got off work, Walsh, Louis Bovell and John Freudigger and myself were there.

Q Do you see Louis Bovell in the courtroom?

A Yes.

Q Will you please indicate Mr. Bovell.

A There in the gray suit (indicating).

MR. SPERLING: Indicating the defendant.

THE COURT: Yes.

Where was this?

THE WITNESS: At the Tick Tock.

Schoenly-direct

THE COURT: Bovell was at the Tick Tock?

THE WITNESS: Yes.

THE COURT: And Freudigger?

THE WITNESS: Yes.

Q Do you know Mr. Bovell by any other name?

A Yes, Gunner.

Q How long have you known Mr. Bovell?

A Approximately a year and a half also.

Q How do you know Mr. Bovell?

A He is a regular patron of the Tick Tock.

Q You also indicated someone by the name of John Freudigger was there?

A Yes.

Q Do you see Mr. Freudigger in the courtroom?

A Yes, sitting in the back in the brown suit (indicating).

MR. WARBURGH: Conceded.

Q How long do you know Mr. Freudigger?

A Approximately a year.

Q How do you know Mr. Freudigger?

A Also a patron of the bar.

Q Would you tell us again who was at the bar at

7:00 p.m.?

MR. WARBURGH: Objection.

THE COURT: I will allow it. If you object, please rise.

A At 7:00 o'clock when I got off work, myself, Donald Walsh, Louis Bovell and John Freudigger.

Q What happened at that time?

A Bovell and myself got into my car and drove to where I had parked the truck.

Walsh and Freudigger got in Freudigger's truck and drove to Terri's house where we met them with the truck.

Q What kind of truck did Freudigger have?

A A white open back truck. He used it for his business.

MR. WARBURGH: I object and move to strike that answer.

THE COURT: Do you know that of your own knowledge?

THE WITNESS: Yes.

THE COURT: I will allow it.

Q What type of business is Mr. Freudigger in?

A Roofing and siding.

Q When you met them at Janet Terri's house, approximately what time was it?

A I was there approximately 7:15.

Q When you got there, what did you do?

9 1
2 A Backed the truck into the driveway, opened it
3 up, then Freudigger went inside the house. Gunner and Walsh
4 were outside the house. I was inside the van.

5 The boxes were handed from the house to Bovell
6 to myself in the truck. I stacked them.

7 Q What was Walsh doing at that time?

8 A He was standing there. He was on crutches at
9 the time. He had just come out of the hospital.

10 Q Will you tell us approximately what these boxes
11 that you were loading on the truck looked like?

12 A There were a few different sizes. I don't
13 know. Some were maybe two feet long, approximately a foot high.
14 Some were square, maybe 18 inches square.

15 Q What were the boxes made out of?

16 A Cardboard.

17 Q Did you notice any markings on the boxes?

18 A There were markings but I didn't pay any
19 attention to them.

20 Q Approximately, if you recall, how many boxes
21 did you load on the truck?

22 A I never counted them. I would say maybe 100.

23 Q Besides the boxes, did you load anything else
24 on to the truck?

25 A A few plastic garbage bags filled with packing

material.

MR. KIMELMAN: May I have these marked?

THE CLERK: Two photographs marked for identification as Government's Exhibit 3 and 4.

(So marked.)

Q I show you what has been marked as Government's Exhibit 3 and Government's Exhibit 4 for identification, and ask you if you can identify those photographs?

A They look -- they are the bags that I put in the truck.

Q Those photographs are a fair and accurate representation of the bags that you loaded on the truck on March 21st?

A Yes.

MR. KIMELMAN: Your Honor, I offer Government's Exhibits 3 and 4.

(Pause)

MR. VERDIRAMO: On behalf of Joyce, no objection.

MR. CORBETT: No objection on behalf of Mr. Walsh.

MR. O'BRIEN: I object to the photographs on the grounds it is not at all connected with my client at this time.

MR. KAPLAN: I make the same objection.

MR. SPERLING: Your Honor, I have an objection as to the introduction of these photographs on the grounds there has been no foundation for these photographs at all. We don't know who took these photographs and when they were taken and where.

THE COURT: Well, let the others take a look at them to see if there are individual objections.

(Pause.)

MR. MALTESE: I object. There has been no proper foundation for these. They could have been taken at the garbage dump at the airline.

THE COURT: Let's take a look at them.

(Pause)

THE COURT: You want to ask one or more appropriate questions as to whether they are a fair and accurate representation --

MR. KIMELMAN: I asked that.

THE COURT: I want to hear it again.

Q Mr. Schoenly, I ask you to look at Government's Exhibits 3 and 4 again and I ask you if this is a fair and accurate representation of the bags that you loaded on the truck on March 21, 1975?

A Yes. It looks just like it.

THE COURT: From where did those bags come?

THE WITNESS: From Janet Terri's house.

THE COURT: They were loaded on with the other cartons?

THE WITNESS: Yes.

THE COURT: Objection overruled. The photographs are received in evidence.

MR. O'BRIEN: Your Honor --

MR. WARBURGH: I would like to have questions on a voir dire.

THE COURT: All right, I will allow it.

VOIR DIRE EXAMINATION

BY MR. O'BRIEN:

Q You testified those bags look just like the bags --

A Yes.

Q Are you certain these are the actual bags you loaded onto the truck?

A Well, unless I had the bags here I couldn't be 100 per cent positive.

Q You don't know whether or not these pictures of these bags are the actual bags you loaded on the truck?

A Exactly like it.

Q You don't know of your own personal knowledge whether they are actually the bags, right?

THE COURT: Yes.

(Photographs were then handed to the members of the jury.)

BY MR. KIMELMAN:

Q Now, approximately how long did it take you to load the boxes and these bags onto the truck?

MR. WARBURGH: Your Honor, I don't know how the jury can follow the testimony and look at the photographs at the same time.

THE COURT: The same way you did.

A Approximately twenty-five minutes, half-hour.

Q And after the bags and the boxes were loaded, what did you do?

A Closed up the truck, Louis Bovell took my car, drove it back to Tick-Tock, Walsh and Freudiger got into Freudiger's truck and I drove the van that I had rented to Railroad Place in Island Park, where I parked the truck and locked it up. I got in the truck with Walsh and Freudiger and we drove back to the Tick-Tock.

Q Now, is the location where you parked the truck in Island Park visible on Government's Exhibit 1?

A No, it is not, it is further down in Island Park than the map shows.

Q Can you just indicate with the pen, without

marking the map, how you got down there.

A From I remember the route --

Q Will you stand over this side, Mr. Schoenly.

(The witness took a position beside the map.)

A We left Terri's house, down Merrick Road to Ocean Avenue, Ocean Avenue down into East Rockaway, crossed the Pearl Street Bridge to Rockaway Avenue to Lawson Blvd. to Daley Blvd., to Long Beach Road, to Austin Blvd. to Railroad Place in Island Park.

Q Did you follow a similar route going back to the bar?

A No, well, similar, there is like only two main roads into Island Park, we came back the same way, we went through Oceanside, I don't remember exactly which way, I remember we went down Long Beach Road.

Q Now, when you got the bar, was anyone else there?

A When we got to the bar, no.

Q Did there come a time when Bill Joyce came to the bar?

A Yes, he came in shortly after.

Q And did he have a conversation with anyone?

A He had a conversation with Walsh.

Q And were you able to overhear any of the

conversation between Joyce and Walsh at that time?

A Very little. Walsh told Joyce that we had moved the shipment and Joyce was -- he didn't like the idea, he said it was quite unnecessary to move it, that Walsh had gotten a little nervous about it.

Q This was all on Friday, March 21st; is that correct?

A Yes.

Q On Monday, March 24th, did you have a conversation with Bill Joyce?

A Yes, I did.

Q And what was the conversation?

A Bill --

Q Excuse me, where did the conversation take place and approximately what time?

A I would say it would be in the earlier afternoon in the Tick-Tock, Joyce told me that he needed the van for at least another day, he wanted me to call Hub Rental and see what I had to do with it, I called Hub Rental, they told me I needed an additional \$50 deposit --

MR. WARBURGH: Objection.

THE COURT: Yes, strike it.

Q After your conversation with Hub Rental, what did you do?

A I received an additional \$50 from Joyce, took it down to Hub Rental and put it as an additional deposit for the truck and returned to the Tick-Tock.

Q Now, on the evening of March 24, 1975, did you have another conversation with Joyce?

A Later that evening I was working at Boyle's Lounge, Joyce came into the bar and told me that he had taken the truck back to Hub Rental and that I should go and get the deposit back the following day.

Q And where is Boyle's Lounge located?

A Shall I mark it on the map?

Q First, in what town?

A In Rosedale.

Q In Rosedale?

A Right.

Q Will you mark on the map where Boyle's Lounge is.

(The witness did as indicated on the map.)

Q I take it you were working at Boyle's Lounge as a bartender; is that correct?

A Yes, part-time on Monday nights.

Q And Joyce came in at approximately what time?

A I don't know the exact time, I would say approximately midnight.

Q And did you have a conversation with him at that time?

A Yes, he had told me that he had taken the truck back to Hub Rental and that I should go and pick up the deposit the following day.

Q And on the following day, did you go back to Hub Rental?

A Yes, I did.

Q And what did you do at Hub Rental?

A They signed the truck out, you know, and gave me the deposit back of what was due.

Q And was that -- that is marked Government's Exhibit 2?

A Yes, it is a refund due, \$102.76.

Q And did you sign for the refund?

A Yes, I did.

Q Okay.

You received the money back, what did you do with the money?

A I went back to the Tick-Tock Bar and gave it to Bill Joyce.

MR. KIMELMAN: Your Honor, may I now pass Government's Exhibit 2 to the jury?

THE COURT: Yes.

(Mr. Kimelman then handed the document to
a member of the jury.)

By MR. KIMELMAN:

Q When was the next time that you spoke to
Bill Joyce; do you recall?

That is after that date.

A I don't recall, no.

MR. KIMELMAN: Your Honor, may I have a
side bar for an offer of proof?

THE COURT: All right.

Why don't we excuse the jury for a moment,
it is a little bit cumbersome to do that at side bar,
why don't we take a five-minute recess.

Leave that exhibit here, madam.

Don't discuss the case.

We will show it to you again.

(At 10:55 a.m. the jury left the courtroom
for a recess.)

THE COURT: Counsel and the defendants, don't
leave, we have matters going on here.

MR. KIMELMAN: Your Honor, I would like to
ask Mr. Schoenly at this time whether there came a
time when he had a meeting with Mr. Walsh, Mr. Joyce
and Janet Terri where they indicated to him that

1 first of all he should go to Joyce's attorney to
2 get advice and they followed it by then advising
3 Mr. Schoenly that if he was called before the grand
4 jury to take the Fifth Amendment because if nobody
5 talked in the case then nobody could get in trouble.
6

7 I would like to offer that as evidence of
8 guilt on the part of Mr. Joyce, Mr. Walsh and
9 Miss Terri. It occurred after the arrest of
10 Mr. Joyce and while the grand jury was hearing evi-
11 dence as to Miss Terri and Mr. Walsh.

12 The part that I think clearly indicates
13 evidence of guilt is the advice to him that if you
14 plead the Fifth and nobody talks then nobody can
15 get in trouble.

16 THE COURT: Hearing no objection --

17 MR. CORBETT: Oh, no, we are waiting for
18 the United States Attorney to finish.

19 MR. O'BRIEN: Your Honor, it seemed obvious
20 that it was not admissible and that the Court was
21 going to keep it out.

22 MR. VERDIRAMO: With reference to Mr. Joyce,
23 your Honor, it is absolutely so prejudicial that I
24 don't think it actually shows anything.

25 THE COURT: Everything that has happened here
is so prejudicial.

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MR. VERDIRAMO: I would say that I think

this would be a lot more prejudicial than anything
said so far.

THE COURT: Now this is conversation --

MR. VERDIRAMO: Yes, it is conversation,
your Honor, but --

THE COURT: And it can be construed as an
admission, can it not.

MR. VERDIRAMO: So he is saying that it came
from Joyce's counsel.

THE COURT: No, no, it came from Joyce.

MR. KAPLAN: It varies the indictment, the
indictment saying that the conspiracy was between
the 17th and the 27th and this took place --

THE COURT: This is not a part of the
conspiracy, this is an admission against interest
made by Messrs. Joyce, Walsh and Terri.

Is that right?

MR. KIMELMAN: I would also argue, your
Honor --

THE COURT: I don't think it concerns the
others.

MR. KIMELMAN: Your Honor, although it is not
alleged as a part of the conspiracy the law in this
circuit indicates that efforts taken to conceal the

21 existence of a conspiracy are also part of the
2 conspiracy and acts which are part of the
3 conspiracy are admissible in evidence.

4 MR. CORBETT: Judge. --

5 MR. KIMELMAN: Pardon me.

6 MR. CORBETT: I am sorry, sir.

7 MR. KIMELMAN: Since this was still prior to
8 the indictment and only several of the individuals
9 had been arrested and the other individuals were
10 under investigation, I think it can be strongly
11 argued that the conspiracy as to these individuals
12 was still in existence and that --

13 THE COURT: Wait a minute, we haven't had any
14 proof of any conspiracy except possibly between
15 Walsh, Joyce and Ferry and the two, Freudinger and
16 Bovell.

17 I didn't hear Mr. Grimsley's name or
18 Mr. Hanan's yet, we have had nothing as to Mr. Hanan
19 at all.

20 MR. KIMELMAN: Not at this point.

21 THE COURT: Are you offering it as against
22 them?

23 MR. KIMELMAN: Subject to connection, your
24 Honor.

25 MR. O'BRIEN: I strongly object to that, too,

3 1 I do think the Court should give the jury a
2 cautionary instruction as far as Grimsley is
3 concerned --

4 THE COURT: Well, I think what you have got
5 to do, along with me, is make notes, particularly
6 you because I don't know if I can do this, you have
7 to protect your own interests, the interests of your
8 own client. Now those photographs I took in subject
9 to connection against Grimsley and Hanan. If they
10 are not connected then I assume you are going to
11 move to strike (indicating Mr. O'Brien), and you
12 are going to move to strike (indicating Mr. Maltese).

13 If there is no connection to your two clients,
14 you can move to strike and similarly with something
15 like this.

16 If nothing comes up any more than has come
17 up now you may move to have it stricken and you may
18 walk out of the case.

19 But you have to keep in mind that you must
20 make the appropriate motions at the appropriate
21 time.

22 MR. O'BRIEN: I will be happy to do that,
23 but I still think it becomes so difficult, this
24 could be a five day trial or longer, possibly two
25 weeks, and --

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THE COURT: You don't put all of it on me,
I will do my best but I can't try your case.

MR. O'BRIEN: I think it should be done in
the opposite way, I think it should not be admitted --

THE COURT: Well, we may be here six months
and have witnesses on and off and trying to connect
things up and so forth and so on, you can't try a
case that way.

MR. O'BRIEN: All you have to do is to
advise the jury not to consider that against
Grimsley.

THE COURT: No, no, I'm not going to do that,
that would get them confused at this stage, I will
give them appropriate instruction if it is not
connected.

MR. MALTESE: Am I correct in assuming that
this was Joyce or Walsh who told him that their
attorney stated this, it isn't obvious here.

THE COURT: No, Joyce and/or Walsh said that.

MR. KAPLAN: Your Honor, I most strongly
object to that --

THE COURT: You can't object, Miss Terri was
there.

MR. KAPLAN: I am going to object to the
substance of what he wants to have this witness say

5 1 with respect to what a lawyer told him, that is
2 to take the fifth amendment, that is not proof of
3 guilt to give him that advice.

4 THE COURT: You can argue that to the jury.

5 MR. KAPLAN: I have to argue first with you
6 about it, I want to argue to you that it is in-
7 admissible.

8 Do you want to tell me that you are going to
9 admit it and then I should tell the jury you were
10 wrong, no.

11 THE COURT: No, no, it is a question of what
12 inference may be drawn, but I will allow the
13 statement to go into evidence.

14 MR. KAPLAN: I want to call to your Honor's
15 attention, and I know we are operating under the
16 Federal Rules of Evidence, and we all wish to show
17 our gratitude to the government, but I think there
18 are limits of the amount of gratitude the Court
19 should exhibit, and I think this is one of the more
20 obvious limitations.

21 THE COURT: No. This is a remark that may be
22 construed as an admission against interest. It may
23 also be argued to be not such an admission to the
24 jury, and you might argue that, and I don't know if
25 the jury will believe you, but if an attorney had

61 given the advice it might be something else again,
2 this is a conversation between the principals.

3 MR. CORBETT: I will put the same
4 objection on the record that Mr. O'Brien made.

5 MR. VERDIRAMO: I object on the same grounds
6 that Mr. Kaplan offered.

7 MR. O'BRIEN: I would like to raise the
8 question of prejudice in addition to those affects,
9 I think the prejudice far outweighs the probative
10 value. This is a lay jury and the fact of the
11 suggestion of taking the fifth amendment would be
12 construed as so prejudicial against all of the
13 defendants that it far outweighs its probable
14 materiality that it may have in this case. I don't
15 believe that it is material to this case whatsoever
16 as to whether or not a defendant said, If you're
17 called, invoke the fifth amendment. The defendant
18 has a right or anybody has the right to --

19 THE COURT: There is no question about it
20 but if one defendant says to the other and in the
21 context that Mr. Kimelman said, that if he will
22 not testify they will not be able to get anything
23 on us, that may be construed as an admission against
24 interest.

25 MR. KAPLAN: The only misconduct here is

7 1 giving legal advice without having the benefit of a
2 license to do so.

3 MR. MALTESE: It will not only be held against
4 the man who said it, it is going to be construed
5 against everyone.

6 THE COURT: It may not be.

7 MR. MALTESE: Why should this one individual
8 bind everyone here.

9 THE COURT: That is the very problem here.

10 If this were an attempt to cover up the
11 conspiracy even after the conspiracy is said to have
12 ended, then I think Mr. Kimelman is right.

13 You may produce evidence to show that there
14 was an attempt to cover up the conspiracy, or to
15 put it another way, an attempt to obstruct justice.

16 MR. O'BRIEN: They are not charged with that,
17 your Honor.

18 THE COURT: But it is certainly a part of the
19 evidence, it is admissible against --

20 MR. O'BRIEN: Your Honor, the conspiracy did
21 in fact end because there were arrests.

22 THE COURT: It is an attempt to cover up the
23 conspiracy even after the arrests, and it is
24 admissible as against all of the conspirators.

25 MR. WARBURGH: If that be the theory that the

8 1 Court is going to allow this in evidence under, I
2 submit that the conspiracy ended, by the government's
3 own admission or allegation in this indictment in
4 that this statement was made sometime in June, so it
5 would only be admissible as against those people who
6 made it because the conspiracy ended.

7 THE COURT: No, if it was an effort to cover
8 up the conspiracy --

9 MR. WARBURGH: It would be only against those
10 people -- your Honor, the government could have put
11 that in the indictment, that is that the conspiracy
12 lasted until the filing of the indictment.

13 THE COURT: There is a reason to show evidence
14 of this kind, and although the evidence shows the
15 conspiracy to have ended in March, there was an
16 attempt to cover up the conspiracy --

17 MR. WARBURGH: Even though the people withdrew
18 from the conspiracy by the arrests, et cetera?

19 (Continued next page.)
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1 MR. KIMELMAN: Your Honor, I argued a case
2 before the Second Circuit recently called United
3 States against Bermudez where a defendant was caught
4 with some narcotics approximately two or three
5 months -- narcotics and narcotic implements --
6 approximately two or three months after the conspiracy
7 charged by the government had ended. The Court upheld
8 admission of the evidence that the defendant had
9 previously participated in the previous conspiracy
10 even though the search was made two months after the
11 conspiracy charged by the government had ended.

12 MR. WARBURGH: That was an admission I
13 believe against him, it wasn't an admission against
14 those people who had withdrawn from the conspiracy
15 because of their arrest or some other action.

16 THE COURT: That is the point, it was
17 admissible as against all of them --

18 MR. WARBURGH: Your Honor, may I say --

19 MR. KIMELMAN: No, your Honor, in that case
20 it was admissible only as to that defendant as
21 evidence that he had participated in the conspiracy.

22 MR. WARBURGH: That is what I am saying, and
23 that is why the statement should only be admissible
24 as against those people who made them, not against
25 my client who wasn't even present when this statement

10 1 was made in June of 1975, many months after this
2 conspiracy ended.

3 MR. O'BRIEN: I join in that motion, your
4 Honor.

5 MR. SPERLING: I do, too, your Honor, there
6 is nothing here to connect Mr. Bovell with any
7 statement like that. The only testimony thus far
8 about Mr. Bovell was from Mr. Schoenly that
9 Mr. Bovell helped transfer the stuff on the 21st of
10 March, that is all.

11 MR. WARBURGH: Your Honor, let us just
12 assume somebody said to Mr. Schoenly today, If you
13 testify I will blow your brains out. Now the
14 government would probably be permitted to introduce
15 that but only as against the person who made the
16 statement to show consciousness of guilt, not to
17 show that it is not admissible against everybody,
18 it would only be admissible as against the person
19 who made the statement.

20 THE COURT: I don't know why it isn't
21 admissible to show the existence of the conspiracy.

22 I would say it would be admissible to show
23 the existence of the conspiracy.

24 MR. WARBURGH: It wouldn't be admissible, it
25 would only be a consciousness of guilt on that person

11 1 who made the statement.

2 MR. KIMELMAN: It is certainly obvious, your
3 Honor, of consciousness of guilt and as admission
4 against interest against the three defendants who
5 were present.

6 THE COURT: I am not worried about those, but
7 I don't know why it wouldn't be admissible against
8 all, but on that facet I won't instruct the jury
9 until I have had a chance to do some research. It
10 does seem to me it would be admissible to show the
11 conspiracy but now at the moment I will instruct the
12 jury that it is only admissible as against the three
13 of them and I will give them a further instruction
14 later on.

15 MR. WARBURGH: Only against who, Walsh, Joyce
16 and Terri?

17 THE COURT: Yes, and not against the others
18 at this time, although I may change my views, and
19 I will keep this block of testimony in mind.

20 MR. O'BRIEN: I would object to the last part
21 being given to the jury because, your Honor, if
22 your Honor states --

23 THE COURT: Do you want me to do it after I
24 get the law on the subject and then have it read to
25 them.

12 1 MR. WARBURGH: Why doesn't your Honor make a
2 determination and then if you find the government
3 can do this then call this witness back and let him
4 testify to this incident.

5 THE COURT: No, I won't let him testify to
6 it now and we will take it against these three and
7 I will tell them that against the others I am
8 withholding the evidence at the moment until I have
9 had a chance to check certain aspects of the law and
10 I will instruct them more on it later.

11 MR. WARBURGH: What if you find it is not
12 even admissible as against those who made it?

13 THE COURT: Well, there is no doubt about that.

14 MR. KAPLAN: If your Honor then makes the
15 statement the damage is done and it will be harder
16 to withdraw it later.

17 THE COURT: This will apply as to the three
18 people who made the statement.

19 MR. KAPLAN: Judge, can we talk about a
20 couple of housekeeping items if we are finished with
21 this.

22 THE COURT: Don't go away, Mr. Maltese.

23 MR. KAPLAN: Would your Honor direct the Court
24 Reporter to give us the minutes of yesterday's
25 opening, I understand we don't get them unless you

13 1 direct.

2 THE COURT: Has the government ordered them.

3 (There was discussion held off the record
4 apropos the transcript.)

5 MR. KAPLAN: Can we move onto the next thing,
6 Judge.

7 We got more than a page and a half of 3500
8 material, I have gone through some of it but I think
9 it is more extensive than Mr. Kimelman told you
10 yesterday.

11 THE COURT: We are going to have a five minute
12 recess.

13 MR. KAPLAN: I want to call your attention
14 that it might take more than five minutes.

15 THE COURT: Get to work now.

16 (A ten-minute recess was taken.)

17 (Continued next page.)
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(Whereupon, the jury entered the jury box.)

THE COURT: Now, ladies and gentlemen, during this recess we have had a discussion on one or two legal points. One, at least of which I have not been able to resolve completely. At the moment, the testimony that is about to be given by this witness is going to be admissible only against the three persons who he identifies as being present during the conversations that are going to be related. It may be at a later stage in the case that I will recall this portion of the testimony to you and say that it is admissible against one or more or all of the remaining defendants. But at the moment you are only to take it against the three persons who this witness identifies, if he so identifies them.

I haven't heard the testimony myself, but I have been given a generalized description. And I will caution you and -- from this point to a point where Mr. Kimelman indicates to me when this block of testimony terminates. You will restrict it as against those defendants only.

MR. KIMELMAN: Thank you, your Honor.

Q Now, Mr. Schoenly, did there come a time when you were subpoenaed to appear before a Grand Jury in this

2 courthouse?

3 A Yes.

4 Q What was that in connection with?

5 A With the theft of the watches.

6 Q Prior to your coming to the Grand Jury, did
7 you have a conversation with any of the defendants on trial?

8 A Yes, I did.

9 Q Who did you have a conversation with?

10 A Walsh, Joyce and Terri.

11 MR. WARBURG: Can we have a date, please?

12 THE COURT: Let's take one thing at a time,
13 Mr. Warburg. First we have to know who is talking.
14 Then we will get where, when and how.

15 With whom?

16 THE WITNESS: Walsh, Joyce and Terri.

17 Q Approximately when did the conversation take
18 place?

19 A It was the week before we had come to appear
20 before the Grand Jury.

21 Q Do you recall when you testified before the
22 Grand Jury?

23 A The date?

24 Q Yes.

25 A No, I don't. I don't remember.

1
2 Q I show you this document and I ask you if it
3 refreshes your recollection as to the date you testified
4 before the Grand Jury.

5 A Yes. Right. June 9th.

6 Q This was approximately one week before June 9th;
7 is that correct?

8 A Yes, sir.

9 Q Where did the conversation take place?

10 A In the Tick-Tock Bar.

11 Q What was the conversation on that date?

12 A Joyce wanted me to contact his lawyer to get
13 consultation about appearing before the Grand Jury on that
14 day. They told me that if no one --

15 MR. KAPLAN: I object to "they." Can we know
16 exactly who said what?

17 THE COURT: Do you remember who said it or
18 were they all discussing it?

19 THE WITNESS: It was a discussion between the
20 four of us.

21 THE COURT: All right, go ahead.

22 THE WITNESS: It was said that if no one talked,
23 that the Government would have no case. I was --
24 you know --

25 Q Did they give you advice as to whether you

4 1
2 should talk or not?

3 MR. KAPLAN: I object to the use of the pro-
4 noun, your Honor, unless all four of them are saying
5 the same thing.

6 THE COURT: He has to revise the form.
7 Did anyone give you any further advice? If so,
8 whom?

9 THE WITNESS: About testifying?

10 THE COURT: Yes.

11 THE WITNESS: I can't say exactly which one.

12 THE COURT: All right. Did any of them give
13 you any further advice?

14 THE WITNESS: Plead the Fifth Amendment.

15 THE COURT: Do you recall who said that?

16 THE WITNESS: No, I don't, your Honor.

17 MR. KAPLAN: I am going to move to strike it.

18 THE COURT: No. I will let it stand.

19 THE WITNESS: Their -- it was in the conversa-
20 tion.

21 Q Did you eventually testify before the Grand
22 Jury?

23 A Yes, I did.

24 THE COURT: Is that the end of that portion of
25 the testimony?

MR. KIMELMAN: That's correct, your Honor.

THE COURT: All right. Bear in mind at the moment all -- that is only going to be admissible against the three persons: Mrs. Walsh, Joyce and Mrs. Terri, if you so find as a fact, of course, that the conversation took place and you believe it took place and that it was given as said.

THE CLERK: Two photographs marked for Identification as Government Exhibit 5 and Government Exhibit 6.

Q Mr. Schoenly, I show you what has been marked as Government Exhibit 5 for Identification and I ask you if you can identify that photograph?

A That is the Tick-Tock Bar.

Q Is that a fair and accurate representation of what the Tick-Tock Bar looks like?

A Yes.

Q I show you what has been marked as Government Exhibit 6 for Identification. I ask you if you can identify that photograph.

A That's the house of Janet Terri.

Q Is that a fair and accurate representation of the house of Janet Terri in March of '75?

A Yes.

MR. KIMELMAN: Your Honor, I offer Government Exhibits 5 and 6.

MR. O'BRIEN: I object to the photograph on the grounds that it's completely immaterial. The fact that this witness testified that something happened at a house or something happened at a Tick-Tock Bar, it is not corroborated by pictures of the house and pictures of the Tick-Tock Bar.

THE COURT: Show them to the others down the line.

MR. KAPLAN: Yes, I have seen it.

MR. WARBURG: I object to the introduction of these photographs.

MR. MALTESE: Your Honor, I think these photographs are irrelevant.

THE COURT: Let me see them.

The objection is overruled. They may be received.

THE CLERK: Government Exhibits 5 and 6 received in Evidence.

Q By the way, Mr. Schoenly, would you indicate on Government's Exhibit 1 where Janet Terri's house is on that map?

A On Harriet Place.

1 [131]
2 Q Harriet Place between which streets?

3 A Between Watkins and Denton.

4 Q O.K. Now, Mr. Schoenly, are you testifying
5 here today pursuant to an agreement with the United States
6 Government?

7 A Yes, I am.

8 Q Would you indicate to the jury, in your own
9 words, what your understanding of that agreement to be?

10 MR. O'BRIEN: I object to this as improper
11 direct examination.

12 THE COURT: No, I will allow it under the new
13 rules.

14 Q Go ahead.

15 A All right. The agreement with the United
16 States Government is that if I plead guilty to a charge of
17 conspiracy, the charge of possession will not be filed.
18 Conspiracy faces up to five years in prison and a fine. At
19 the time of sentencing, the cooperation will be brought to
20 the attention of the sentencing judge. And I am not immune
21 to perjury. If I perjure myself, I can be tried on it.
22 And if I perjure myself, any agreement between myself and the
23 Government is nullified.

24 Q Have you in fact entered a plea of guilty to
25 the conspiracy count charged in the indictment?

1 [138]
2 Q This Tick-Tock Lounge that you worked in,
3 will you describe it for me, please? As you entered the
4 door, what is the first thing that you see?

5 A The front door?

6 Q Yes.

7 A Another door.

8 Q Then beyond that?

9 A Double door there.

10 Q Beyond the double door, what is there?

11 A The bar is to the left. There is a partition
12 in the middle more or less closing in the back room.

13 Q How many seats are at that bar?

14 A Approximately 12 or 13.

15 Q How long is the bar?

16 A Twenty, twenty-five feet.

17 Q Where is the cash register situated in that
18 bar?

19 A In the middle.

20 Q Were you the only bartender on on March 21st?

21 A Yes.

22 Q What time did Mr. Joyce arrive at the bar on
23 the 21st?

24 A Approximately 10:30.

25 Q Wasn't that on the 17th that he arrived at --

- 1
2 A Excuse me. You said the 21st. I am sorry.
3 Q What time did he come in on the 21st?
4 A The 21st? That evening when he talked to Walsh?
5 Q About what time did he come in on the 21st?
6 A Let's see. Maybe 8:30.
7 Q Mr. Schoenly, when he arrived there, at what
8 time on the 17th, the first date you saw him?
9 A Approximately 10:30. Between 10:15 and 10:30.
10 Q What time did you normally open the bar?
11 A About the same time.
12 Q Do you recall being interviewed on 3/25/75, the
13 exact date that you picked up that deposit, and telling
14 Mr. Sullivan that you saw Mr. Joyce in the parking lot waiting
15 for you to open?
16 A Yes.
17 Q Did you also remember telling Mr. Sullivan on
18 that day that you saw no one else in the bar on that day?
19 A Yes, I do.
20 Q That was a lie, wasn't it?
21 A Yes.
22 Q That's what you say today, it is a lie?
23 A Yes.
24 Q Did there come a time, Mr. Schoenly, when
25 Mr. Sullivan came down and forced you to close the tavern to

1
2 A Yes. Well, that's -- all right. I referred to
3 that as court.

4 Q Isn't it a fact that you already were
5 cooperating with the Government from the 25th of March on?
6 Isn't that true?

7 A Yes.

8 Q And yet you want us to believe, Mr. Schoenly,
9 do you not --

10 MR. KIMELMAN: I object to the form of the
11 question.

12 THE COURT: Don't argue with the witness.
13 It's argumentative.

14 Q Mr. Schoenly, you made a statement that
15 Mr. Joyce told you to take the Fifth Amendment.

16 A He wanted me to, yes.

17 Q Isn't that absurd, Mr. Schoenly, when you
18 were already cooperating with them?

19 A Joyce didn't know I was cooperating.

20 Q Didn't you tell Mr. Joyce that you were coming
21 down to the federal building on the 2nd of April?

22 A The 2nd -- I don't know which date that is.

23 Q You had one interview in the parking lot;
24 isn't that right?

25 A Right.

1
2 Q And your place of business was opened at that
3 time?

4 A Right.

5 Q The second time you went down, your bar was
6 closed; is that right? You closed the bar?

7 A Right.

8 Q Didn't Mr. Joyce know about you closing the bar
9 and going down to be interviewed?

10 A He wasn't there at the time that I went down.
11 He knew afterwards.

12 Q But you told him about it when you came back?

13 A Right.

14 Q Isn't it a fact that during that interview you
15 told him that Mr. Joyce told you to rent a truck for the
16 purpose of moving furniture?

17 A Yes.

18 Q That was a lie; is that what you are telling
19 us now?

20 A Yes.

21 Q Do you remember testifying on direct examination
22 that during the period of time, between the hours of one and
23 one thirty on March 17th, that Mr. Joyce spoke in your presence
24 to Mr. Burns?

25 A Mr. Burns was in there, yes.

Q Did you tell the FBI on 4/2/75 that Billy Joyce

1 had talked to him, Burns, in his presence about the theft?

2 Do you remember telling him that?

3 A Not offhand.

4 Q Do you remember being in the FBI Headquarters in
5 the presence of Mr. Bigley and Mr. Sullivan?

6 A Yes.

7 Q Second time you were down.

8 Do you recall making the statement to them at
9 this point, you admitted that you knew that the rental of the
10 truck was in connection with the stolen watches?

11 A Yes.

12 Q And that was true, right?

13 A Right.

14 Q And you also said that at that time Mr. Joyce
15 had spoken to Mr. Burns in your presence about the theft?

16 A Yes.

17 Q Do you remember testifying that you couldn't hear
18 what Mr. Joyce and Mr. Burns testified to -- what they stated
19 among themselves? Do you remember testifying to that twenty
20 minutes ago?

21 A No.

22 Q That you could not hear that conversation?

23 A No, I don't remember.

24 Q Could you hear Mr. Joyce and Mr. Burns speaking
25

1 in your presence about a theft on March 17th at about
2 1:30 in the afternoon?
3

4 A I don't know if I heard the exact words or
5 heard the words --

6 Q Do you remember testifying in this court
7 just a few minutes ago that you couldn't hear what they
8 said?

9 A I don't remember.

10 Q You don't remember what they said?

11 A I don't remember.

12 Q You don't remember.

13 That part of the April 2, 1975 report, you
14 say is true; is that right? About the theft and about the
15 truck?

16 A I knew what they were talking about. I don't
17 know if I overheard the conversation or not.

18 Q You're saying, are you not, Mr. Schoenly,
19 that the information you gave to the FBI on the 2nd of
20 April, 1975, about the theft was true? But only a few
21 minutes prior to that, when you told them about the fact
22 you rented the truck to move furniture, that was a lie; is
23 that right? Is that what you are saying here today?

24 A Would you repeat that? I'm getting confused.

25 Q All right. On April 2, 1975, you told the

1 FBI agents --

2 A Yes.

3 Q (Continuing) -- that Mr. Joyce told you to rent
4 a truck for the purpose of moving furniture?
5

6 A Right.

7 Q You said that was a lie; is that right?

8 A Now I say it's a lie, yes.

9 Q But on that date you told them it was true?

10 A Yes.

11 Q All right. During the same interview, you told
12 them that you heard Mr. Burns and Mr. Joyce discuss the
13 theft of watches? Was that true?

14 A If it's in the statement, I said it.

15 Q In other words, what you are telling me,
16 Mr. Schoenly, is you don't know what was true and what was
17 false on the 2nd of April, '75; isn't that right?

18 MR. KIMELMAN: Objection.

19 THE WITNESS: I can't remember my statements
20 from that day.

21 Q But you remember quite clearly, do you not,
22 Mr. Schoenly, the deal you made with the Government, don't
23 you?

24 A Yes.

25 Q When did you find out that these were Timex

1 watches?

2 A Let me see. The 7th. I believe the night of
3 the 18th.

4 Q Do you remember during that interview of the
5 2nd of April, 1975, stating that you believe that you must
6 have used the truck in connection with the theft to move the
7 loadover the weekend which ended on March 23, 1975 because
8 Joyce returned the rental receipt to you on the 24th? Do
9 you remember that?

10 A The 24th is the day --

11 Q Do you remember making that statement to the FBI?

12 A Right. I moved the merchandise on the 21st.

13 Q No, you said you believe you must have used the
14 truck. At that point you're stating to the FBI you still
15 do not know what was on that truck?

16 MR. KIMELMAN: Objection, your Honor.

17 THE COURT: Yes. Sustained in that form.

18 Q Mr. Schoenly, do you know what you told the
19 FBI on that day about your connection about this theft? Did
20 you understand what you told them on this day?

21 A That was the first interview, when they took me
22 out of the bar to go down to talk to them.

23 Q That was the second interview. The first one
24 was in the parking lot, you stated?
25

2 A I don't remember who brought it up. I
3 remember I talked about it.

4 Q You told us on March 21 that Donald Walsh
5 accompanied by someone else came into the bar, is that
6 right?

7 A Yes.

8 Q What time did they come in?

9 A Approximately 2:00 o'clock.

10 Q You told us that after a conversation with
11 Walsh you just walked out of the bar and went to the Hub
12 Rental?

13 A I left Janet Terri to watch the bar.

14 Q She didn't work there then?

15 A Not during the day. I believe she was
16 working at night at that time.

17 Q Who relieved you at night when your day hours
18 came to an end?

19 A There were quite a few different girls working
20 there, different ones all the time.

21 Q You don't remember who they were other than
22 Miss Terri, is that correct?

23 A I could probably give you a few names. There
24 are quite a few. I couldn't say exactly which was employed
25 there on the 21st.

2 Q You don't remember?

3 A I can give you a couple of names. I couldn't
4 be sure if I gave you the right names.

5 Q So, is your testimony you installed her behind
6 the bar on the 21st?

7 A Yes.

8 Q Then you went off to the Hub Rental?

9 A Yes.

10 Q How long did you stay away from the bar?

11 A Maybe a half hour.

12 Q You don't remember?

13 A I don't remember exactly the time I left.

14 Q You don't remember -- it's your testimony you
15 don't remember what time you left and how long you were
16 absent from the bar?

17 A No, I don't.

18 Q You don't remember what time you came back?

19 A The second time I came back was a quarter after
20 4:00, after I had finally rented the truck.

21 But I don't sit there and look at a watch. I
22 didn't wear a watch.

23 Q Was there a clock in the bar?

24 A I did wear a watch. Yes, there is but I didn't
25 sit and look at the clock all day. I don't pay attention to

2 that.

3 Q Now, you remember you were wearing a watch
4 that day?

5 A Right. I got a watch from my girlfriend for
6 my birthday.

7 Q Is that girlfriend the girl you married?

8 A Yes.

9 MR. CORBETT: I have no further questions of
10 this witness.

11 CROSS-EXAMINATION

12 BY MR. O'BRIEN:

13 Q Mr. Schoenly, I represent Mr. James Grimsley.
14 Do you know Mr. Grimsley?

15 A No.

16 Q You never met him or seen him before?

17 A No.

18 MR. O'BRIEN: Mr. Grimsley, would you stand up?
19 (Defendant Grimsley stands.)

20 Q You never seen that man before?

21 A In Court here before, that is the only time.

22 Q During any of the events you described in your
23 direct testimony Mr. Grimsley was not present?

24 A Not at all.

25 Q Now, at the time you loaded those cartons onto

2 the truck had you looked into those cartons?

3 A I had not.

4 Q Had someone told you they were Timex watches?

5 A Yes.

6 Q By merely looking at the cartons, you couldn't
7 tell what was in the cartons, could you?

8 A No.

9 Q Were there any markings on the cartons?

10 A There was numbers and marks but I don't know
11 what they were.

12 Q Could you tell us now what they were?

13 A No.

14 Q Were you able to see them? What I'm trying to
15 find out is what kind of markings they were, just numbers?

16 A Could have been numbers or I don't believe
17 they were any type of works or anything. I didn't pay any
18 attention to it really.

19 Q Somebody had told you those cartons had been
20 stolen, isn't that so?

21 A Yes.

22 Q By merely looking at the cartons could you
23 tell whether or not those cartons were stolen?

24 A They look like any other cartons.

25 MR. KIMELMAN: Objection. They didn't have

2 the word stolen written on them.

3 MR. O'BRIEN: That is what I am trying to get
4 at.

5 Q You couldn't tell they were stolen by merely
6 looking at them?

7 A No.

8 MR. O'BRIEN: I have no further questions.

9 (Continued next page.)

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2 BY MR. KAPLAN:

3 Q Mr. Schoenly, is the Tick-Tock a licensed
4 premises?

5 A Licensed bar? Yes.

6 Q What kind of license does it have?

7 A I don't know.

8 Q Restaurant, liquor?

9 A It's licensed to serve alcohol.

10 Q Is it also licensed to sell food?

11 A Yes.

12 Q Was it so licensed in March of 1975?

13 A I believe so.

14 Q Was there a cook or a chef on the premises?

15 A At that time, I'm not sure.

16 Q Did you serve food personally?

17 A Well, there was a cook at different times. I'm
18 not sure on the 17th whether there was a cook or not.

19 Q Throughout the period of time, middle of March,
20 1975, did you ever serve any food?

21 A We had a Stewart Sandwich there. I don't know
22 if that machine was there at the time.

23 Q Do you remember if there was a cook or chef
24 there?

25 A I don't recall.

2 Q Were you the day bartender?

3 A Yes.

4 Q Did you get a period of time when you ate?

5 A When I had free time.

6 Q Where did you eat?

7 A I had a Stewart Sandwich when we had them.

8 If I was hungry, somebody would get me something.

9 Q Somebody went out and got you something?

10 A If there was nobody there to cook.

11 Q Would you describe this as a neighborhood bar?

12 A Yes.

13 Q Was the clientele of any particular ethnic

14 derivation?

15 A No, it was mixed.

16 Q Mixed?

17 A Yes.

18 Q Do you think you can draw us a picture of this
19 bar, Mr. Schoenly, the inside of the bar?

20 A I can give you a diagram.

21 Q You think you can do it on that blackboard for
22 us?

23 A Yes.

24 MR. KAPLAN: May we have it, your Honor?

25 THE COURT: Yes.

2 THE WITNESS: Shall I step over there?

3 THE COURT: They will bring it over. It can be
4 erased from there.

5 MR. KAPLAN: It would be easier for the jury
6 to watch it on the blackboard.

7 THE COURT: If you want to preserve it you have
8 to make arrangements to take photographs of it.

9 MR. KAPLAN: I would just as soon have photo-
10 graphs --

11 THE COURT: If you want to preserve what is up
12 there you will have to take photographs.

13 Why don't you put it behind Mr. Corbitt.

14 MR. KAPLAN: I would like the jury to see it.

15 THE COURT: They can see it if you put it over
16 there near the shadow box.

17 If any of them can't see it, we will bring it
18 up.

19 Q Come down, Mr. Schoenly, and draw us a diagram
20 of the bar.

21 THE COURT: Are you a pretty good artist,
22 Mr. Schoenly?

23 THE WITNESS: Terrible.

24 MR. KAPLAN: Maybe he is a better bartender,
25 your Honor.

2 THE COURT: He probably is.

3 THE WITNESS: The front door came in like this
4 (indicating).

5 There was another door here (indicating). Around
6 here, this way.

7 Over here is a storage room here, cold box, to
8 the right there is a band stand in front of the window.

9 There is a wall coming all the way down here
10 (indicating).

11 This would be a kitchen back here and this is
12 all the way back (indicating).

13 The ladies' room is here and the men's room is
14 here.

15 The back door is here with a telephone in a
16 hallway with double back doors.

17 Around here is the bar, the opening of the bar,
18 at this end (indicating).

19 Over here there is a partition that comes around
20 this way (indicating).

21 There is a dance floor here and tables back
22 here (indicating).

23 There are bar stools along here (indicating).

24 THE COURT: For a terrible artist, I think you
25 did all right.

2 Q Is this what you call the return of the bar?

3 A (No response.)

4 Q Is that part of the bar?

5 A Yes.

6 Q How many feet is that?

7 A Five feet.

8 Q Five feet here?

9 A Four or five.

10 Q How many bar stools are normally at that part
11 of the bar?

12 A Two.

13 Q About where I've got them?

14 A About there.

15 Q O.K.

16 This part up here is all bar, too, isn't it?

17 A Yes.

18 Q How many feet is that?

19 THE COURT: Look at the length of the jury box,
20 Mr. Schoenly, is it as long as that?

21 Q Is it as long as the jury box?

22 A It's not that long, no. Maybe 20 feet.

23 Q You say it's about 20 feet up this way (indicat-
24 ing)?

25 A Could be.

2 Q How many bar stools are up there?

3 A It varied from day to day. Some would get
4 broken and they were repaired.

5 Q What would you say the average is?

6 A Eight, nine.

7 Q About like I got them (indicating)?

8 A Right.

9 Q Now, this part over here, that is part of the
10 bar also (indicating)?

11 A Yes.

12 Q Is that also four to five feet?

13 A Yes.

14 Q How many bar stools would normally be there?

15 A About two.

16 Q You say up here is the ladies' room (indicating)?

17 A Yes.

18 Q I will put an "L" there.

19 A Yes.

20 Q And the men's room is where I put the "M"?

21 A Yes.

22 Q Where I put the "T" is the telephone (indicating)?

23 A Yes.

24 Q Can you see the telephone from the bar?

25 A No.

2 Q You can't?

3 A No.

4 Q You have to go out towards the men's room?

5 A Right.

6 Q The same corridor that serves the men's room
7 serves the telephone?

8 A No.

9 Q They are different corridors?

10 A No, the men's room door is inside the bar.
11 To get to the telephone you go in between the double doors.

12 Q There are two doors?

13 A One here and one leading out to the parking
14 lot (indicating).

15 Q Over here?

16 A Yes.

17 Q Now, is this a wall over here (indicating)?

18 A Yes, a solid wall.

19 Q Where I put the "W"?

20 A Yes.

21 Q Where is the cash register?

22 A Right in the center of the wall.

23 Q Where I put the "C"?

24 A Yes.

25 (Continued on next page.)

1
ekds
Tk5
R1
a.m.3

[171]

Schoenly - cross/Kaplan

160a

2 Q Now, do you have a back wall there?

3 A Yes, sir.

4 Q Is that where your liquor is, the bottles?

5 A Yes.

6 Q Is the back wall mirrored?

7 A Yes, mirrors and brick.

8 Q Now, how about the sinks, where are they

9 located?

10 A Underneath the bar, one here and one here

11 (indicating).

12 Q Okay.

13 Where I put the S's?

14 A Right.

15 Q Now, how about the beer taps?

16 A Right in front of the cash register.

17 Q Just one set of beer taps?

18 A Right, four taps.

19 Q Four taps where I put the T?

20 A Yes.

21 Q Is that it?

22 A That's about it.

23 Q Now, from the bar can you see these tables

24 (indicating)?

25 A Yes, there is curtains there.

2 Q Is this (indicating) a corridor?

3 A Yes.

4 Q Or a passageway?

5 A A walkway.

6 Q A walkway?

7 A A walkway.

8 Q Well, can we agree that we can designate
9 the walkway by a Y?

10 MR. KAPLAN: Is that all right?

11 THE COURT: All right.

12 Q And how wide is the walkway?

13 A From the bar to the wall, it is maybe, maybe
14 three and a half feet.

15 Q Now, what is over here, at this line?

16 A The partition.

17 Q What kind of a partition is it, a wooden
18 partition?

19 A It is wood up to, oh, about four and a half
20 feet high --

21 Q Yes?

22 A And there is curtains down.

23 Q In March of 1975, were the curtains on top
24 of the four and a half-foot partition?

25 A They might have had wood slats at the time.

Q But there was something that impeded the view of the bartender into this room (indicating); is that correct?

A Yes, sir.

Q Was there six tables here (indicating)?

A I don't know how many at the time.

Q Were there chairs around the tables?

A Yes, sir.

Q And the bandstand, were you able to see the bandstand from where you were standing?

A From this end of the bar, yes.

Q From the front end of the bar?

A Yes.

Q Is the bandstand right over here (indicating)?

A Right in front of the window.

Q Where I put the B, and the dance floor, and is there a box over here (indicating)?

A Yes.

Q Where I put the F?

A Yes.

Q What is over here (indicating)?

A Well, actually the bandstand goes all the way over to the wall.

Q The bandstand goes all the way over to the

wall?

A Yes, there are meters there, electric -- not electric, gas meters.

Basically it goes to the wall.

Q What is over here (indicating)?

A A cold box and storeroom.

Q Where I put an ST?

A Right.

Q Okay.

Now, on March 17, 1975, were you the only employee on the premises?

A Yes, sir.

Q And were you responsible for the entire bar?

A Yes, sir.

Q Okay.

Would you resume the stand now, please.

(The witness then resumed the witness stand.)

MR. KAPLAN: Incidentally, may I inquire through your Honor whether the jury can see it? I took my glasses off, I am having trouble seeing it myself.

THE COURT: Is there any juror who hasn't been able to follow all of that?

I take it from their silence, you know,

1 like all of your silence, that they all followed
2 you.

3
4 MR. KIMELMAN: Your Honor, perhaps Mr. Kaplan
5 would like to mark the piece of artwork.

6 THE COURT: Would you like to move it up
7 closer and let them see it closer?

8 MR. KAPLAN: If the jury can see it, I am
9 satisfied.

10 THE COURT: If you put your glasses on maybe
11 you can see it, too.

12 MR. KAPLAN: I don't want to confuse myself,
13 Judge.

14 BY MR. KAPLAN:

15 Q Now, who is the licensee of that bar?

16 A Bill Galan.

17 Q He is the individual who is the licensee?

18 A Yes, sir.

19 Q How do you spell his last name?

20 A G-A-L-A-N.

21 Q B --

22 A G.

23 Q G-A-L --

24 A A-N.

25 Q A-N.

William?

A Right.

Q Now, does he personally work in the bar?

A No.

Q No!

He doesn't tend bar there at all?

A No.

Q And how many bartenders were working there
in March of '75?

A Bartenders, I believe just myself, the rest
were girls.

Q What were your hours in March of 1975?

A 11:00 to 7:00, I always opened up early though
to get cleaned up, get the bar cleaned up, the money straight.

Q At 7:00 o'clock in the evening somebody
relieved you, did they?

A Yes.

Q Now, in March of 1975, as far as your duties --
as part of your duties as bartender you also collected the
money; did you not?

A Yes, while people were drinking.

Q I mean you were selling drinks, you collected
money; right?

A Right.

Q And at the end of your shift did you run a tape on the amount of sales that you made?

A Yes, sir.

Q Did you give that to Mr. Galan?

A I left it for him.

Q Okay.

And you had a pretty good idea of the volume of business that the bar was doing at that period of time; did you not?

A During the day, yes.

Q How much business was it doing?

A During the day?

Q Well, while you were working.

A Anywhere between \$50 and \$100 during the day.

Q \$50 to \$100 during an 8-hour period of time?

A Right.

Q And did you give him a breakdown of the type of beverages you were dispensing?

A I don't understand what you mean.

Q Well, what kind of a place was this, was it a beer drinking place, was it where people were drinking martinis, is that what they were doing?

A They drink beer and whiskey, the whiskey was run up on one key and the beer on another key.

Q You as bartender, you have a pretty good idea what the breakdown was, how much for beer and how much for whiskey?

A Right.

Q On an average, how much beer ~~were~~ you selling by volume and how much whiskey?

A About 70 percent was beer.

Q What was the price of a beer?

A Twenty-five cents a glass, forty cents a bottle.

Q For the \$50 to \$100 that you ~~were~~ doing in business there, how many patrons did that translate into during an 8-hour shift, on the average?

A I have got no idea, one guy can sit there and drink \$20, you know, it would vary.

Q It would vary from what to what?

I mean would you have fifty people in there at once, a hundred people, two people?

A It couldn't fit that many people.

Q What?

A It couldn't fit that many people.

Q How many people did you have there?

A It depended on the time, in the morning it was very light.

Q Give me an average during your 8-hour shift,

how many patrons would you have during a weekday on an average in March, 1975?

A Through the day -- I don't know how I can give you an average -- four, I will say four.

Q Four people would drink a hundred dollars worth of booze during a day?

A Well, no, I never counted the amount of people that came in.

Q I didn't ask you whether you counted, Mr.Schoenly, I want some idea of what volume of business you were doing, how many patrons, was it busy, wasn't it busy, that is what I am asking you.

MR. KIMELMAN: Your Honor, I am going to object to any further questions along this line --

THE COURT: No, I will allow it.

MR. KIMELMAN: (Continuing) unless he gets to the point.

THE COURT: I will allow it.

A Maybe during the day forty different people came in.

Q Forty different on the average?

A Right.

Q All right.

Now, was March 17, 1975, a day of some significance?

2 A St. Patty's Day.

3 Q And you had some customers who were anxious
4 to celebrate the event, I take it?

5 A Not until later in the afternoon.

6 Q I see.

7 Did you have a bigger volume of business on St. Patrick's
8 Day than you had the day before or the day after?

9 A The day before I didn't work.

10 Q How about the day after?

11 A There was more business later, later in the
12 evening.

13 Q Of what, St. Patty's Day or March 18th?

14 A There was more business on St. Patty's Day
15 than on the day after.

16 Q St. Patty's Day was the big day at that bar,
17 wasn't it?

18 A Later on in the evening.

19 Q There are some people on St. Patrick's Day
20 who celebrate St. Patrick's Day who don't celebrate other
21 days?

22 A No --

23 Q You don't know that?

24 A I wouldn't know that, I wouldn't know.

25 Q You don't know that?

- 1
- 2 A They celebrate every holiday --
- 3 Q I see.
- 4 A People who hang out in bars celebrate Thursdays.
- 5 Q Do they celebrate the Jewish holidays, too?
- 6 A Anything.
- 7 Q So on St. Patty's Day that wasn't a day that
- 8 was more than --
- 9 A There was more business because they put
- 10 out corned beef and cabbage special at about 5:00 o'clock.
- 11 Q So there were more people?
- 12 A I said later in the afternoon there was more
- 13 business.
- 14 Q All right.
- 15 Now, how many different people did you talk to on
- 16 St. Patrick's Day in that bar?
- 17 A When I left at 7:00 o'clock the bar was packed,
- 18 there might have been thirty-five, forty people there.
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(Continued on next page.)

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Schoenly - cross/Kaplan

171a

ekds

Tk5 2

R2

a.m. 3

Q That you had been serving before you left?

A Right.

Q And when did this crowd of people start coming in there?

A 4:30, 5:00, 5:30.

Q And up to that point, how many people had you had in the bar?

A I don't remember, not an outrageous amount.

Q When you checked the cash register at the end of your shift, how much business had you had on March 17, 1975?

A I don't remember.

Q You don't remember that?

A No.

Q Was it more than \$50 or \$100?

A It might have been a little more than a hundred. I don't think it was too much more.

Q Not even with the corned beef and cabbage?

A No, because it doesn't start until late, it didn't start getting crowded until late. I don't remember what the take was for that day.

Q You don't remember?

A For that day.

Q Now, you have told us, Mr. Schoenly, that on

1 [183]

Schoenly - cross/Kaplan

172a

2 March 21, 1975 you had a conversation with Walsh and Terri;
3 is that right?

4 A Right.

5 Q What time of the day did that occur?

6 A Approximately 2:00 o'clock.

7 Q 2:00 o'clock in the afternoon?

8 A In the afternoon, yes, sir.

9 Q And were there any people in the bar when they
10 came in?

11 A No.

12 Q None at all?

13 A There might have been somebody when they came
14 in but when I went to get the truck there was nobody there
15 except us.

16 Q Mr. Schoenly, try to listen to what I asked
17 you, when they walked into the bar on March 21, 1975 was
18 there anybody else in the bar other than you?

19 A I don't think so.

20 Q All right.

21 And how long were they in the bar with you until
22 you left?

23 A Maybe an hour or so.

24 Q And during that hour or so, did anybody else
25 come into the bar?

2 A That was an exceptional day, no, they didn't.

3 Q The answer is, "No"; is that it?

4 A Right.

5 Q And you recall that it was a dead day?

6 A Yes.

7 Q Was that the only dead day in March of 1975
8 that you can recall?

9 A No.

10 Q No.

11 What other dead days can you recall offhand?

12 A A few, I don't know the dates.

13 Q You don't know the dates.

14 I assume those dead dates will be reflected in your
15 cash receipts that you told Mr. Galan about?

16 A Right.

17 Q Incidentally, what is Mr. Galan's address?

18 A Quebeck Road, Island Park.

19 Q What is that?

20 A Quebeck Road.

21 Q How do you spell it?

22 A Q-U-E-B-E --

23 Q Q-U-E-B-E --

24 A E-C-K.

25 Q Quebeck Road, Island Park?

2 A Quebec Road, Island Park.

3 Q Now, when they came in on March 21, 1975, where
4 were they sitting or standing; do you recall?

5 A At the end of the bar where the opening is.

6 Q You mean back towards where the mens room
7 is, where the M is; is that correct?

8 A Right, right.

9 Q They walked into the bar here (indicating)?

10 A No, through the back.

11 Q They came in through the back?

12 A From the parking lot.

13 Q From the parking lot, and did they sit down
14 at the end of the bar up here (indicating)?

15 A Not directly at the end because the opening
16 is there.

17 Q But at that portion of the bar that I am
18 pointing to; is that right?

19 A Right.

20 Q And you say at that time you recall there was
21 nobody else in the bar except for?

22 A Right.

23 Q And did you have a conversation with them there?

24 A Yes.

25 Q And you were standing behind the bar; is that

it?

A Yes, sir.

Q Do you recall that?

A Yes.

Q And they sat there for an hour to an hour and a half?

A Yes.

Q And you stood there for an hour to an hour and a half?

A Right.

Q And absolutely nobody else came in, according to your recollection?

A As far as I remember, nobody came in.

Q All right.

Now, were they drinking?

A I don't recall, sometimes during the day they did, if they came in they would drink sometimes, sometimes not.

Q And you don't recall on this day whether they drank or not?

A No, I don't.

Q They sat there for an hour and a half without drinking, as far as you recall?

A Well, if they weren't drinking whiskeys, they

2 were drinking soda.

3 Q Do you remember serving them soda?

4 A No, I don't remember serving them whiskey
5 either.

6 Q Do you remember serving them anything during
7 this hour and a half period?

8 A I never thought about it, I don't recall
9 whether they did or not.

10 Q Don't let me rush you, Mr. Schoenly, sit there
11 and think about it.

12 A Most likely they had a soda, I don't remember.

13 Q Now, this cash register that you rang up
14 sales on, did it have a tape?

15 A Yes, sir.

16 Q Did the tape indicate the time that the sales
17 were rung up?

18 A No.

19 Q Did it indicate what kind of beverage was
20 sold?

21 A You rang up on keys, whether it was beer
22 or whiskey.

23 Q And what if it was plain soda, what did you
24 ring it up on?

25 A Beer.

2 Q Beer.

3 And I assume if they drank something, you would
4 charge them; is that correct?

5 A Yes.

6 Q And rang it up?

7 A Right.

8 Q And how much would you charge for soda in
9 that time?

10 A A quarter.

11 Q Now, you have told us that there was some
12 conversation about renting a truck on that day; is that
13 correct?

14 A Yes.

15 Q Now, there came a time on April 2nd,
16 Mr. Schoenly, when you spoke to some police about that con-
17 versation on March 21, 1975?

18 A Yes, sir.

19 Q And I assume your recollection about that
20 event was clearer than it is now; is that the fact?

21 A Yes.

22 Q Now, before you went and spoke to these
23 police about that, had you had any conversation with Walsh
24 or Terri about your going down there to talk to the police?

25 A No.

1 [189]

Schoenly - cross/Kaplan

178a

2 Q You never told them you were going to talk
3 to the police, did you?

4 A No.

5 Q So they couldn't have told you what to tell
6 the police, could they?

7 A No.

8 Q Or not to tell the truth?

9 A No.

10 Q All right.

11 Now, when you left the bar on April 2nd, whom did
12 you go with?

13 A When -- when I went to the -- to the airport?

14 Q Well, let us start off this way:

15 They took you to a building at the airport, did they?

16 A Yes.

17 Who took me?

18 Q Yes, who took you?

19 A His name was Braeger, I don't know --

20 Q How do you spell it?

21 A I don't know.

22 Q Was he an agent of the FBI?

23 A Yes

24 Q He showed you a card in a little plastic folder?

25 A Yes --

1 Q Did he --

2 A I guess so, I don't know what he showed me.

3 Q He showed you some identification, did he?

4 A Right.

5 Q Did he come alone?

6 A No.

7 Q Whom did he come with?

8 A Three others.

9 Q Who were they?

10 A I don't know their names.

11 Q They were some kind of law enforcement people?

12 A Right.

13 Q Four of them?

14 A Right.

15 Q They told you that they wanted you to come
16 down to an FBI building at Kennedy?

17 A Yes.

18 Q Was that the first time that you had ever
19 spoken to any police about the events covered in this
20 indictment?

21 A No.

22 Q You spoke to them in the parking lot prior
23 to that?

24 A Yes.

2 Q Other than that, was this the first time?

3 A Yes.

4 Q Now, did the four of them drive you to Kennedy?

5 A Yes.

6 Q In one of their cars?

7 A Yes.

8 Q And where did you go?

9 A To the federal building, I believe.

10 Q And did you go to a room in the federal build-
11 ing?

12 A Yes, sir.

13 Q And did these people identify themselves so
14 that you knew who they were?

15 A Yes, sir.

16 Q And you knew they were police of various types,
17 agents and so on?

18 A Yes, sir.

19 Q What kind of a room did they take you to?

20 A A small room with a desk and a few chairs.

21 Q Did everybody sit down?

22 A I don't remember.

23 Q You don't?

24 Did you sit down?

25 A Yes, I sat down.

2 Q Who was asking you the questions principally?

3 A Mr. Sullivan.

4 Q Now was Mr. Sullivan nice to you?

5 A Fairly nice.

6 Q Sure.

7 He didn't slug you or anything like that, did he?

8 A No.

9 Q He didn't even threaten to do that, did he?

10 A No.

11 Q Nobody put any harsh lights in your eyes, did
12 they?

13 A No.

14 Q No.

15 They let you smoke if you wanted to?

16 A Yes.

17 Q Get you coffee?

18 A No.

19 Q No.

20 Were you able to go to the mens room if you wanted
21 to?

22 A I didn't have to, I don't know.

23 Q You didn't have to.

24 Now, before you started talking, did they show you
25 some sort of form called a Voluntary Disclosure Form,

Voluntary Appearance, Advice of Rights Form?

A I don't know what it was called, there was a form, though.

Q It was a form that they asked you to sign, wasn't it?

A Right.

Q What did the form say?

A That I agreed to talk to them without the presence of an attorney, I believe.

Q Yes.

Voluntarily?

A Voluntarily, yes.

Q Sure.

Did they tell you to tell the truth?

A Sure, yes.

Q They didn't ask you to lie about anybody or anything, did they?

A No.

Q They said to you, Tell us the truth; isn't that it?

A Yes.

Q When you voluntarily signed that form, you understood that you were talking to people about a crime that they were investigating; did you not?

2 A I never signed anything.

3 Q You didn't sign the form?

4 Now, you were --

5 A Oh, the Waiver of Rights, that form, yes.

6 Q You signed that Waiver of Rights, didn't you?

7 A My statement I didn't sign.

8 Q The Waiver you signed, the Waiver of Rights
9 which you acknowledged that you were waiving your rights to
10 an attorney and you were agreeing to talk to them?

11 A Right.

12 Q Incidentally, what is the level of your educa-
13 tion, Mr. Schoenly?

14 A High school.

15 Q You are a high school graduate?

16 A Yes.

17 Q And is English the only language that you are
18 fluent in, can read and write in?

19 A Yes.

20 Q I assume you understood the form?

21 A I think so, yes.

22 Q They explained it to you?

23 A Yes.

24

25 (Continued on next page.)

2 Q That agent told you if you signed that form you
3 were not going to have a lawyer, that you had a right to
4 have a lawyer and you agreed voluntarily to waive your right
5 to a lawyer?

6 A Right.

7 Q Isn't that the fact?

8 A Yes, sir.

9 Q And you agreed to all of that; isn't that
10 true?

11 A Yes, sir.

12 Q And they urged you to tell them the truth, didn't
13 they?

14 A Yes.

15 Q And you told them you were going to tell them
16 the truth?

17 Didn't you tell them that?

18 A I guess I did.

19 Q Sure you did.

20 And when you talked to them, did you tell them the
21 truth?

22 A Not entirely, no.

23 Q Somebody was making notes, wasn't he?

24 A Yes.

25 Q Sure. And you started telling them what you

1 knew about the Timex watches?

2 A Yes.

3 Q Now, before you started telling them what you
4 knew about the Timex watches, had they asked you any specific
5 questions?
6

7 A I don't remember.

8 Q Well, I mean did somebody say, It's a lovely
9 day, or something, what happened?

10 A They started asking me the questions after I
11 signed that waiver.

12 Q Look, Mr. Schoenly, you haven't made a career
13 out of talking to FBI men, have you?

14 A No.

15 Q This has only happened to you a couple of times
16 in your life?

17 A Yes.

18 Q It was a significant event; wasn't it?

19 A Right.

20 Q Sure it was.

21 MR. KIMELMAN: Your Honor, I'm going to object
22 to the constant comments by counsel after each ques-
23 tion, "sure," and --

24 THE COURT: Don't put in your own asides, we
25 can do without them.

MR. KAPLAN: I'm sorry, your Honor, I haven't intended to -- too deliberately, that is.

BY MR. KAPLAN:

Q Now, this significant event in your life, you remember what happened then?

A I was scared to death, I don't remember, you know, everything.

Q You don't remember everything, but before you started talking you signed that form, though, didn't you?

A Right.

Q You remember that?

A Yes.

Q And after you signed that form, were you still scared?

A Sure I was.

Q Sure --

MR. KAPLAN: I am sorry.

Q Now, tell us the best you can what you remember about how this conversation started after you signed the form.

A He started asking me the questions, I don't remember in what order or anything.

Q Tell us what you remember, who asked you and what.

2 A I have to look at my sheet again.

3 Q Sure, here it is.

4 (Document handed to the witness.)

5 A Right, they had asked me about the truck I
6 rented, so I told them, I gave them this story about renting
7 the truck.

8 Q Did Sullivan or somebody else start this
9 interview off by saying: Did you rent a truck?

10 A Yes, they knew I had rented a truck.

11 Q Is that how it started, somebody said to you,
12 did you rent a truck?

13 A I don't know the exact words.

14 Q What is it that you remember about this thing,
15 if anything?

16 A I remember giving a statement.

17 Q You don't remember anybody asking you any ques-
18 tions?

19 A Yes, they asked me questions, I answered them.

20 Q What questions were you asked and what answers
21 did you give?

22 A I was asked about the truck, about my involve-
23 ment, who else was involved.

24 (Continued on next page.)

1 [199] Schoenly-cross 188a
2 Q Somebody started this off by asking you about
3 a truck?

4 A I believe so.

5 Q And you told them that on March 21st, between
6 3:00 and 4:00 A.M., Joyce asked you to rent a truck from Hub
7 Rental?

8 A That's what I told them, yes.

9 Q Now, had anybody told you to give such an answer?

10 A No.

11 Q Nobody at all?

12 A No.

13 Q Walsh didn't ask you to make such an answer?

14 A No.

15 Q Terri didn't ask you to make such an answer?
16 All these policemen that were there, they didn't tell you to
17 make such an answer, did they?

18 A No.

19 Q You thought up this answer yourself?

20 A Yes.

21 Q Now, when you gave them that answer,
22 Mr. Schoenly, was there any significant difference in your
23 mind between Joyce and Walsh as far as that answer went?

24 MR. KIMELMAN: Your Honor, I object to the form
25 of the question.

MR. KAPLAN: I think I am entitled to ask him what the operation of his mind was.

THE COURT: I will allow it.

THE WITNESS: All right. Will you repeat that, please?

Q When you gave them that answer, which you tell us now was false, in your mind at that time was there any difference between Joyce and Walsh?

A They -- from what I had figured, they knew that Joyce was involved in it. At the time, I was trying to keep as many people out of it as possible.

Q How did you know that?

A How did I know? How did I know that they -- they -- they kept using Joyce's name. They had -- they told me that -- you know, they knew it was him.

Q You mean before you made that answer about Joyce renting the truck, this FBI agent, those policemen kept telling you that Joyce was in this thing?

A Yes.

Q You're sure now?

A I think so.

Q They started the interview off by telling you, "We know Joyce stole the watches."

A I don't remember the words.

1 [201] Schoenly-cross 190a
2 Q But they used Joyce's name?

3 A There were a few names brought up. I don't know
4 if it was -- it's before the questioning or after the
5 questioning.

6 Q Well, what names were brought up?

7 A Joyce, Walsh, Terri, Burns, Bob Ryder, my own.

8 Q Now, who mentioned all those names to you?

9 A I believe it was Mr. Sullivan.

10 Q Did he tell you that after you signed that form?

11 A I don't remember.

12 Q You don't remember?

13 A I don't remember if we talked before. I didn't
14 give any statement before I signed. I would have to sign the
15 form right away before he did anything.

16 Q You would have had to do that?

17 A Right. Before I answered any questions.

18 Q I see.

19 Now, after you signed the form, did Sullivan say
20 to you, all these names, yours, Joyce, Walsh, the rest of them --

21 A At some time after that, yes.

22 Q At some time after that, you told him who told
23 you to rent the truck; is that correct?

24 A Yes.

25 Q After he mentioned all these names?

1 [202] Schoenly-cross 191a
2 A I don't know if it was after or before.

3 Q You don't know. But when he mentioned all these
4 names, you knew that all these people were known to the FBI?

5 A Yes.

6 Q All of them?

7 A Yes.

8 Q So when you told them that Joyce told you to rent
9 the truck, you knew that the agents already knew all the names,
10 didn't you?

11 A Yes. But I didn't know what they knew.

12 Q You didn't know what they knew, but you knew they
13 knew all the names?

14 A Yes.

15 Q Every one that you have told us about?

16 A Yes.

17 Q From all of those names that you have told us
18 about, you picked out the name Joyce, about the truck rental;
19 is that right?

20 A Yes.

21 Q Now, I am going to ask you again, Mr. Schoenly,
22 was there something going on in your head at that time that
23 made you pick out Joyce's name instead of some other name?

24 A I didn't want to get too many people involved.
25 I didn't want to give a statement, you know, against anybody.

1 Q Anybody except Joyce?

2 A Yes.

3 Q Even though they had told you all the other names?

4 A Yes.

5 Q Now, was there some reason you picked Joyce out
6 instead of everybody else that they told you about?

7 A He was the usual one, the most involved, in my
8 opinion.

9 Q How did you arrive at that opinion?

10 A Because he -- he's the one who took the
11 merchandise.

12 Q Who told you that? Sullivan told you that?

13 A No.

14 Q Did you see Joyce take any merchandise?

15 A No.

16 Q But you decided in your own mind that he must be
17 the one that's the one that's the most responsible?

18 A Yes.

19 Q That's why you told the FBI he was the one who
20 told you to take the truck?

21 THE COURT: Is that a question or a statement?

22 MR. KAPLAN: Well, I am trying to ask him ques-
23 tions, Judge. I would much prefer to make statements,
24 but I am afraid he wouldn't let me.
25

THE COURT: Once you put it in that light --

MR. KAPLAN: Will you read it back to him,
please, with the question mark at the end?

(Record read.)

Q Is that correct?

A Yes.

Q And you figured all this out in your own head;
is that correct?

A Yes.

Q And you thought that when you were doing that,
you were doing everybody else a favor; is that correct?

A Yes.

Q You thought about this before you told the agent
that; isn't that correct?

A I -- I would say so.

Q And is that the reason that you told the agent
the lie?

A I think so. I'm confused with the question.

Q Well, let me put it to you this way, Mr. Schoenly
As you recall the events that took place in April of 1975,
can you tell us the specific reason why you lied to the agents
about who told you to rent the truck?

A Because I didn't want to get anybody -- I didn't
want to get too many people involved if I didn't have to.

1 Q And that's the reason?

2 A That's the reason I told them that Joyce had
3 taken -- told me to rent it.

4 Q When you told them that, you knew that you were
5 telling him a deliberate falsehood; is that correct?

6 A Yes.

7 Q Now, there came a time on April 4th when you had
8 another interview with these people?

9 A Yes.

10 Q How did that come about?

11 A I called him up and made an appointment to go to
12 see him. I told him that some of my statements weren't the
13 truth and I wanted to correct them.

14 Q Who did you say all of this to?

15 A Mr. Sullivan.

16 Q You called Mr. Sullivan at the FBI at Kennedy?

17 A Yes, I did.

18 Q Now, between April 2nd and April 4th, had you
19 consulted anybody about your statement?

20 A No.

21 Q Spoken to a lawyer?

22 A No.

23 Q Consulted a clergyman?

24 A No.

25 Q Consulted anybody?

1 A I talked to Thomas Burns.

2 Q He was the only one you spoke to?

3 A Yes.

4 Q Talked to anybody else? Girl friend, parents?

5 A Well, my girl friend, of course.

6 Q Yes. About the statement?

7 A Yes.

8 Q And you told them at some point that you lied?

9 A Yes.

10 Q It was on your conscience?

11 A I wanted to clear it up, yes.

12 Q Somebody urged you to bare your soul and tell

13 the truth between April 2nd and April 4th?

14 A No.

15 Q Nobody did? You decided this for yourself?

16 A I decided myself, yes.

17 Q When did you come to this decision?

18 A I believe I called him on the third.

19 Q Now -- incidentally, how long did this interview

20 last on the 2nd?

21 A Maybe an hour or two. I'm not sure of the time.

22 Q And in that hour or two, you said a lot of things

23 to him, did you not?

24 A Yes.

25 Q Now, as you look back on it, Mr. Schoenly, in

that interview of April 2nd, how many lies did you tell him?

1

2

A I don't remember.

3

4

Q Well, why don't you take a look at this again,
Mr. Schoenly, and see if you can count it up for us.

5

Just read it carefully.

6

A About three.

7

8

Q Now, what were the other two falsehoods? Did
you -- will you mark them off for me? Just put a checkmark in
the margin, will you?

9

10

A There is one other. One other paragraph.

11

Q And that's also about the truck rental, isn't it?

12

A Yes.

13

14

Q In which you said that Joyce asked you go and
get the truck?

15

A Yes.

16

17

Q Q So in this hour and a half interview, or hour or
hour and a half interview, the only lie you told him was about
who told you to get a truck?

18

19

A Yes. That part concerning about that.

20

Q I see.

21

Now, how many names did you mention in that
interview?

22

23

A That interview there?

24

Q Yes.

25

A I believe there's only two.

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Q Well, you mentioned Joyce's name, didn't you?

A Right.

Q And you mentioned Burns' name?

A Right.

Q And you told him about nobody else?

A I don't -- there's nobody else's name in there,
no.

Q Did you tell him about your wife?

A Yes. She wasn't concerned with the case.

Q Did you mention your wife to him?

A Yes, I did.

Q And nobody else's name was mentioned?

A I don't think so.

Q Well, Mr. Schoenly, after they got finished
mentioning this list of names to you: Burns, Walsh, Terri,
and so on, did anyone of those four cops ever say to you,
"What did Walsh have to do with this, if anything"?

A I don't know.

Q You don't know that?

A I don't remember if I was asked that question or
not.

Q You don't remember their asking you that?

A No.

Q Did any of them say to you, "What, if anything,

1 did Terri have to do with this?"

2 A They asked -- I remember they asked me if I knew
3 Janet Terri. And I said, "Yes. She's the barmaid at the Tic
4 Toc."
5

6 That's all they asked me about her.

7 Q That's all they asked you?

8 A Yes.

9 Q That's the only connection that they mentioned
10 her name?

11 A On that day, yes.

12 Q Yes. What connection did they mention Walsh's
13 name in?

14 A I don't remember.

15 Q How about Burns?

16 A Well, Burns had already been -- been arrested at
17 that time.

18 Q What did they say to you about Burns? Did you
19 know anything about him?

20 A I don't remember the conversation with them,
21 except what is on -- what is written down there.

22 Q You mean you don't remember a single word that
23 you said except what is on these papers that I have shown you,
24 and that is dated April 2, 1975?

25 A Very little.

1 [210] Schoenly-cross 199a
2 Q You didn't make these notes, did you?

3 A What notes?

4 Q The notes that are contained in this paper dated
5 April 2, 1975.

6 A I made that statement.

7 Q Did you make the notes? Did you write the
8 statement out?

9 A No.

10 Q Somebody else wrote it out, didn't they?

11 A Yes.

12 Q And you mean all you remember about that
13 interview is what somebody else wrote on this paper that I
14 am holding in my hand?

15 A Yes, that's about right.

16 Q That's all? And you're telling us now that to
17 the best of your recollection, as you sit there testifying,
18 you don't remember any policeman ever saying to you, what did
19 Walsh do; what did Burns do; what did Terri do; or anything
20 of that nature?

21 A I don't remember what they said. They must
22 have asked.

23 Q They must have asked?

24 A They must have asked me, but I don't remember
25 what I said.

1 [211] Schoenly-cross 200a
2 Q But you told them that they were involved in a
3 crime or they weren't involved in a crime?

4 A Well, would you --

5 Q You don't remember?

6 A Would you repeat that?

7 Q Do you remember any of those four policemen say-
8 ing to you:

9 "Was Walsh involved in this crime; was Terri
10 involved in this crime; was Burns involved in this crime?"

11 A They knew about it.

12 Q Did any of those four cops ask you a question
13 like that on April 2, 1975?

14 A I don't remember the questions that were asked.

15 Q Do you remember questions like that?

16 A They must have asked me. I can't remember.

17 I cannot stand here and say that Mr. Sullivan asked me this
18 and that.

19 Q You can't say that?

20 A No.

21

22 (continued next page)

23

24

25

Q Can you tell us whether you told them that somebody else besides Joyce participated in the theft of these Timex watches?

A No. I didn't tell them anything like that.

Q They didn't ask you; you didn't tell them?

A I don't know if they asked me. I couldn't have told them.

Q You knew Burns was arrested at that time, didn't you?

A Yes.

Q You knew something about Burns, didn't you?

A Yes.

Q They didn't ask you anything about Burns, did they?

A Well, there is something in there about Burns.

Q What do you remember? What is in your head?

A I have a terrible memory.

(continued next page)

[214] Schoenly-cross/Kaplan

1
2 Q Did you tell that to Mr. Kimelman while he was
3 preparing you for this trial, that you had a terrible memory?

4 A Well, my statement -- the statements I made to
5 the FBI and the statements before the grand jury --

6 Q I didn't ask you that, Mr. Schoenly. I asked
7 you, when you spoke to Mr. Kimelman in preparation for this
8 trial, did you tell him you had a terrible memory?

9 A Yes.

10 Q You told it to him?

11 A Yes.

12 Q When did you do that?

13 A Last Wednesday, I guess.

14 Q You said to him, "Mr. Kimelman, I've got a
15 terrible memory."

16 A I don't know the exact wording.

17 Q Something like that?

18 A Something like that.

19 Q And what did he do when you told him that?

20 A "Remember things as accurately and as best as
21 you can."

22 Q Did he do anything to help you refresh your
23 memory?

24 A I went over the statement that I had made.

25 Q Yes. And did your memory improve?

2

[215]

Schoenly-cross/Kaplan

1
2 A Yes.

3 Q And has now your memory improved to the limits
4 of its improvement?

5 A I guess it has.

6 Q I mean, do you think tomorrow you will remember
7 something that you can't remember today?

8 A I don't think so.

9 Q Or if I show you an elephant or a piece of hay,
10 would it make your memory any better now than what you have
11 testified to?

12 MR. KIMELMAN: This is all very interesting, but --

13 THE COURT: I will sustain the objection.

14 Ladies and gentlemen, I think we are getting to
15 the point where it might be wise to take an adjournment
16 for lunch.

17 Don't discuss the case during the lunch hour.

18 When I was last out at the same time that you
19 were out of the courtroom, it was snowing, which I am
20 sure you are not happy with. I hope you brought
21 appropriate clothing.

22 Have a good lunch.

23 MR. KAPLAN: Your Honor, can you make it --

24 THE COURT: 2:15. Yes, 2:15, be back.

25 Counsel stay here for a moment. I want to talk

Schoenly-cross/Kaplan

to talk to you.

JUROR NO. 3: What time?

THE COURT: 2:15.

(Whereupon, the jury retired from the courtroom.)

THE COURT: Counsel, please don't go.

There are two transcripts here to be divided between the C.J.A. counsel. I don't know who you designated to be the recipient of --

MR. WARBURGH: I will take one.

MR. KAPLAN: One for me and one for the rest of them.

MR. WARBURGH: One for this end of the table.

MR. KAPLAN: All right, Com, you can hold them.

MR. O'BRIEN: All right.

THE COURT: Mr. Kimelman.

MR. KIMELMAN: Yes, sir.

THE COURT: Mr. Maltese, are you boycotting us?

MR. MALTESE: I am here, sir.

THE COURT: I am sorry.

MR. KIMELMAN: Mr. Verdiramo.

THE COURT: Mr. Verdiramo, I guess.

MR. VERDIRAMO: Yes.

THE COURT: There are two cases that my Law Clerk came up with while we were out here. One is

1 Krulewitch v. United States. 336 US 440. And the
2 other is Dunton v. Evans, 400 US 74. Both of which
3 seem to indicate that the statements would only be
4 admissible as against the three persons.
5

6 MR. O'BRIEN: Fine.

7 THE COURT: I will allow the Government during
8 the lunch hour to come up with any additional citations.

9 MR. KAPLAN: Will you consider that as
10 Defendant's A, the blackboard?

11 THE COURT: Do you want to mark it in evidence?

12 MR. KAPLAN: Well, we can either replace it or
13 -- if I had been in the case a little earlier, I would
14 have had pictures of inside the bar.

15 THE COURT: How are you going to get that to the
16 Court of Appeals? You can't take that blackboard to
17 the Court of Appeals.

18 MR. KAPLAN: We will get a sheet of paper and
19 we will agree that that is what we put on here.

20 THE COURT: Does anybody object?

21 MR. VERDIRAMO: What is this?

22 THE COURT: As Defendant's Exhibit A.

23 MR. VERDIRAMO: Yes.

24 MR. KIMELMAN: No objection, except to the
25 artwork.

1 MR. KAPLAN: I plead guilty.

2
3 THE COURT: I think the artwork was fine. I
4 think it was kind of messed up by the other figures in
5 there.

6 MR. KIMELMAN: Your Honor, may I have some
7 indication how late you intend to proceed?

8 THE COURT: 4:30. I have a panel sentencing
9 meeting.

10 MR. KIMELMAN: Very good, your Honor.

11 I have another witness ready. Mr. Ryder, who I
12 imagine will be on the stand that long. And a third
13 witness is Mr. Burns, who is out on the Island. And
14 in view of the weather I hesitate to call him in since
15 we are -- since we will conclude at 4:30.

16 THE COURT: Well, that's up to you. My guess
17 is that at the rate this cross-examination is going
18 here, you are not going to have much more time than
19 one witness.

20 MR. KIMELMAN: Right.

21 THE COURT: Certainly, if Mr. Kaplan takes as
22 much time with the second witness as he does on the
23 first witness, we will be here --

24 MR. KAPLAN: If I stop going good, interrupt me.

25 THE COURT: You're doing all right.

(Luncheon recess.)

A F T E R N O O N S E S S I O Nmp/ss
lpml

(The jury is in the jury box.)

THE CLERK: Statement of Peter Areiter, marked
3500-5.

Line-up held June 12, 1975, marked 3500-6.

Minutes June 9, 1975, marked 3500-7.

(So marked.)

THE COURT: All right, Mr. Schoenly.

R O B E R T S C H O E N L Y , having been previously duly
sworn, resumed the stand and further testified as
follows:

THE COURT: All right, Mr. Kaplan.

CROSS-EXAMINATION

BY MR. KAPLAN: (Continuing)

Q Mr. Schoenly, when you spoke to Mr. Kimelman,
how many times did you speak to him?

A All together?

Q Yes.

A Three times.

Q Three times?

A Yes.

Q When was the first time?

A Before going to the grand jury.

Q When you spoke to him, who was present on that
occasion?

[220]

2 1

Schoenly-cross/Kaplan

2 A He was alone.

3 Q Did you speak to him in his office?

4 A Yes, in this building.

5 Q On the Fifth Floor?

6 A Yes.

7 Q Did he have a stenographer present?

8 A No.

9 Q Just the two of you were there?

10 A Yes.

11 Q Now, at that time, did you tell him anything
12 about a conversation a week before in the Tic Toc Bar with
13 Joyce, Walsh, and Terri?

14 A Yes.

15 Q You told him that?

16 A Yes.

17 Q You told him that Joyce, Walsh and Terri had
18 advised you to take the fifth amendment?

19 A Yes.

20 Q You are sure now?

21 A Yes.

22 Q Then you went into the grand jury, didn't you?

23 A On the 9th.

24 Q After you spoke to Mr. Kimelman?

25 A Yes.

3 1

Schoenly-cross/Kaplan

2

Q After you told him about that conversation a week before about the fifth amendment, is that right?

4

A I am getting dates mixed up.

5

(Pause.)

6

A No, that had to be after I had the conversation with Mr. Kimelman.

8

Q Let's start again. You testified before the grand jury on the 9th, didn't you, of June?

10

A Yes.

11

Q Before you went into the grand jury, you spoke to Mr. Kimelman?

13

A Yes.

14

Q You spoke to him about what you were going to testify to in the grand jury, didn't you?

16

A Yes.

17

Q Do you remember his telling you have to sign a waiver of immunity?

19

A Yes.

20

Q Did he explain to you what a waiver of immunity meant?

22

A Yes.

23

Q He told you that anything you say could be used against you? Did he tell you all that?

25

A Yes.

[222]

Schoenly-cross/Kaplan

4 1

2 Q He told you all that?

3 A Yes.

4 Q You remember all that?

5 A Yes.

6 Q He went over generally what you were going to
7 tell the grand jury?

8 A Yes.

9 Q Did that occur after you say you had a
10 conversation with Walsh, Joyce and Terri about taking the
11 fifth amendment?

12 A Yes.

13 Q A week after?

14 A I must have told Mr. Kimelman.

15 Q You must have told Mr. Kimelman on June 9th?

16 A Had to be before.

17 Q When was the first time you spoke to him?

18 A I don't know the date. It was before I went
19 to the grand jury. I don't know the date.20 Q Was it on the same date you went to the grand
21 jury?

22 A No.

23 Q It was before?

24 A Before that, yes.

25 Q How far beforehand did you speak to him before

5 1

2 you went to the grand jury?

3 A I don't remember.

4 Q A week, a month, a year? How long before?

5 A Within a week.

6 Q Within a week of June 9th?

7 A I believe so.

8 Q You spoke to him in his office upstairs?

9 A Yes.

10 Q Then on a separate time, within a week later,
11 you came back and testified, is that what you are telling us?

12 A Yes.

13 Q Did you speak to him again on June 9th before
14 you went into the grand jury?

15 A I don't believe so.

16 Q Where is the grand jury, do you know?

17 A In this building someplace.

18 Q On one of these floors?

19 A Yes.

20 Q Did you go directly to the grand jury on the day
21 you testified?

22 A I am trying to remember, yes.

23 Q And you met Mr. Kimelman there?

24 A Yes.

25 Q You went in and you testified?

[224]

Schoenly-cross/Kaplan

6

1

2

A Yes.

3

Q Before you did that you didn't talk to him

4

again?

5

A The last time I talked to him was in his office.

6

Q I didn't ask you that.

7

A You mean after I testified at the grand jury?

8

Q I didn't ask you that either.

9

MR. KIMELMAN: Your Honor, perhaps he can ask

10

a question.

11

MR. KAPLAN: I'm trying, Judge.

12

Q Listen to me, Mr. Schoenly. Did you testify in

13

the grand jury in the morning or the afternoon of June 9th?

14

A In the morning.

15

Q You came to the Courthouse from the island

16

somewhere to testify, did you?

17

A Yes.

18

Q Did you go directly to the grand jury room?

19

A Yes.

20

Q When you got to the grand jury room, did you

21

meet Mr. Kimelman there?

22

A Inside.

23

Q Inside the grand jury room?

24

A Yes.

25

Q So then you didn't talk to him on that day

[225]

Schoenly-cross/Kaplan

on June 9th before you testified, is that what you are telling us?

A I don't think so.

Q But you did talk to him a few days before about what you were going to testify to, is that correct?

A Yes.

Q On that occasion you spoke to him by himself in his office on the fifth floor, is that correct?

A Yes.

Q Now, when you spoke to him a few days before June 9th in his office, was that after you say you had a conversation with Walsh, Terri and Joyce about taking the fifth amendment?

A I must have told him that night because he knew enough about it to question me.

Q When, on June 9th?

A Yes, in the grand jury.

Q In the grand jury?

A Yes.

Q You are telling us now that you told this to the grand jury?

A Yes.

Q Who did you tell the grand jury told you to plead the fifth amendment?

81

2 A Bill Joyce.

3 Q You told that to the grand jury?

4 A I believe so. If it's written right there --

5 Q You tell me what you remember?

6 A (No response.)

7 Q Do you remember you told them that Bill Joyce
8 told you to take the fifth amendment?

9 A Yes.

10 Q Incidentally, when you went in the grand jury
11 room, did somebody administer an oath to you?

12 A I guess so. I don't remember.

13 Q Well, you remember you took an oath when you
14 started to testify here, is that right?

15 A Yes.

16 Q Somebody asked you to raise your right hand and
17 swear to tell the truth and the whole truth and nothing but
18 the truth?

19 A Yes.

20 Q Do you remember that?

21 A Yes.

22 Q Somebody asked you to swear to tell the truth,
23 the whole truth, and nothing but the truth in the grand jury
24 when you testified there?

25 A I guess so, yes.

9 1 [227]

Schoenly-cross/Kaplan

2 Q You swore to tell the truth, the whole truth
3 and nothing but the truth?

4 A Yes.

5 Q When you testified to that grand jury, you
6 knew that you were under oath, didn't you?

7 A Yes.

8 Q You were taking this oath to tell the truth,
9 the whole truth, and nothing but the truth?

10 A Yes.

11 Q Isn't that the fact?

12 A Yes.

13 Q You told the grand jury under oath, to the
14 best of your recollection, that Bill Joyce was the one that
15 told you about taking the fifth amendment?

16 A Yes, to the best of my recollection.

17 Q You told them under oath?

18 A Yes.

19 Q When you told that to them under oath, were you
20 telling the truth?

21 A As far as I know, yes.

22 Q That was the truth, that Joyce was the one
23 that told you to take the fifth amendment?

24 A The three of them were right there. I believe
25 it was Joyce.

[228]

Schoenly-cross/Kaplan

10 1

2

Q I am only asking what you swore to the grand jury. What did you tell them?

3

4

A It was Joyce.

5

Q You told them it was Joyce?

6

A Yes.

7

Q Joyce was the one that told you to take the fifth amendment?

8

9

A To the best of my recollection, yes.

10

Q Now, had you ever visited Janet Terri at the place where she resided any time before March 1975?

11

12

A I think I was there one time before.

13

Q When?

14

A Maybe six months before.

15

Q What was that occasion?

16

A It had something to do with the bar.

17

Q What kind of house --

18

A I went to pick something up or drop something off.

19

20

Q What kind of a house did she live in?

21

A A two-story house. She lived on the bottom

22

floor.

23

Q Anybody else live in the house?

24

A Her mother and father lived upstairs.

25

Q You refer to this several times as Janet Terri

111 [229]

Schoenly-cross/Kaplan

2 house, do you know who owns the house?

3 A Probably her mother & father. I don't know
4 for sure. I don't know who the car is under.

5 Q You think probably her mother and father?

6 A Probably.

7 Q Now, what night was it that you told us you
8 were present when some stuff, some packages and boxes were
9 moved from this house?

10 A March 21st.

11 Q How did you get there?

12 A To the house?

13 Q Yes.

14 A I got there in a truck I rented that afternoon.

15 Q Who did you see at the house at that time?

16 A When I got there, Walsh and Freudiger.

17 Q Who else?

18 A No one else.

19 Q Just those two.

20 A Yes.

21 Q You didn't see anybody else?

22 A Bovell was with me. Just the four of us were
23 there.

24 Q You didn't see Janet Terri there at any time?

25 A No.

12 1 [230]

Schoenly-cross/Kaplan

2 Q At any time at all that day?

3 A No.

4 Q At that house.

5 A At that house that day, no.

6 Q Did you ever see her hold, handle or touch, or
7 have in her possession any of these boxes?

8 A No.

9 Q At any time?

10 A No.

11 Q Mr. Schoenly, on any occasion that you spoke to
12 Mr. Kimelman, was there a stenographer present?

13 A I don't remember.

14 Q Did you ever see a woman in his office making
15 notes on a shorthand pad while you were there?

16 A No. I guess there wasn't.

17 Q Do you know?

18 A No, there wasn't.

19 Q You are sure of that?

20 A I think I am sure.

21 Q When was the last time you spoke to
22 Mr. Kimelman in his office about this case?

23 A About twenty minutes ago.

24 Q What was the last time before that?

25 A This morning.

[231]

Schoenly-cross/Kaplan

13 1

2 Q Before this trial started, were you also in his
3 office?

4 A Yes.

5 Q Did you have an extended discussion with him
6 about your testimony?

7 A Yes, last Wednesday.

8 Q How long was that conversation?

9 A An hour, about an hour and a half.

10 Q Was anybody else in the room besides Mr.
11 Kimelman and yourself?

12 A Near the end, Mr. Sullivan came in.

13 Q That is all?

14 A Yes.

15 Q Nobody else?

16 A My wife.

17 Q Your wife?

18 A Yes.

19 Q Anybody else?

20 A Not during the discussion. She came in later.

21 During the discussion nobody else.

22 Q During this period of time did he show you your
23 grand jury testimony?

24 A Yes.

25 Q Did you read it with him?

2 A Yes.

3 Q Did you go over it with him?

4 A Briefly, yes.

5 Q Did you go over the statements that you made
6 to the agents of the FBI?

7 A Briefly, yes.

8 Q He showed you the April 2nd statement?

9 A Yes.

10 Q You read it?

11 A I went through it.

12 Q You went through the April 4th statement?

13 A Yes.

14 Q Was there any discussion with Mr. Kimelman as
15 to why you told untruths on April 2nd?

16 A Yes.

17 Q You told him why you told untruths?

18 A Yes.

19 Q What did you tell him?

20 A Well, at the time on April 2nd when I was
21 brought in, the reason the only names I mentioned are Joyce
22 and Burns is because they had already been arrested. No one
23 else had. I didn't want -- I was trying not to involve
24 anyone else.

25 Q That's what you told Mr. Kimelman?

[233]

Schoenly-cross/Kaplan

15 1

2 A Yes.

3 Q Did you see Mr. Kimelman since we had this
4 lunch break?

5 A Today?

6 Q Yes.

7 A After we took the break, yes.

8 Q Did you talk to him again about your testimony?

9 A Yes.

10 MR. KAPLAN: I have no further questions.

11 CROSS-EXAMINATION

12 BY MR. SPERLING:

13 Q Mr. Schoenly, how long do you know my client,
14 Louis Bovell?15 A Approximately a year and a half, at the time.
16 It's almost two years now.

17 Q Do you know his wife?

18 A Yes.

19 Q On the 21st of March, did you see his wife in
20 the Tic Toc Bar?

21 A Yes.

22 Q Can you tell us approximately, if you can
23 remember, how many people were in that bar about 7:00 o'clock
24 that evening?

25 A Maybe fifteen or twenty. Maybe ten or fifteen.

Schoenly-cross/Sperling

161

2 Q That is your best recollection?

3 A Yes. I am not too sure.

4 Q Now, Mr. Schoenly, you testified that Mr.
5 Bovell and you left the bar and got into a truck?

6 A No. First we got into my car from the bar.

7 Q Into your car?

8 A Yes.

9 Q You drove to where the truck was parked?

10 A Yes.

11 Q How far was that in distance?

12 A Half a mile, three-quarters of a mile.

13 Q Are you sure, Mr. Schoenly?

14 A I am not quite sure of the distance.

15 Q Mr. Schoenly, we have a map here.

16 A From the Tic Toc here to where the truck is
17 (indicating). From here to here.

18 Q That is about five blocks, am I right?

19 A Five or six blocks.

20 Q You figured that as a half mile?

21 A I would say so.

22 Q That is your best estimate?

23 A Yes.

24 Q How long did that drive take?

25 A Three or four minutes, I guess.

17 1 [235]

Schoenly-cross/Sperling

2 Q Then you got into the truck, is that right?

3 A I did, yes.

4 Q Well, what did my client do? What did
5 Mr. Bovell do?

6 A He got into the truck too and we drove it. It
7 was right around the corner, like fifty or sixty feet away
8 from the house.

9 Q About fifty or sixty feet you drove the truck
10 from where the truck had been parked?

11 A From where it was, it was facing the opposite
12 way, we made a U-turn, a left turn on Janet Street and backed
13 it into the driveway.

14 Q I think you testified that you and my client
15 unloaded the stuff, is that right, or loaded it into another
16 truck?

17 A Yes.

18 Q How long did this take?

19 A Approximately twenty-five minutes.

20 Q Now, were you working at -- what kind of a
21 pace were you working at?

22 A Normal, not really speeded up, not really slow.

23 Q How long did it take?

24 A Approximately twenty-five minutes.

25 Q During that time, did you have any conversation

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Q Earlier that day at four o'clock you had parked the truck at Janet Terri's house; is that right?

A Around the corner from it.

Q Then you had returned to the Tic Toc Bar; is that correct?

A Yes.

Q And upon returning to the Tic Toc Bar, Mr. Walsh was there; is that correct?

A Yes.

Q It was at this time he said we are going to move the shipment around 7:00 o'clock?

A Yes.

Q It was also at that time he told you not to tell Mr. Joyce?

A Yes.

Q Because he didn't want anybody to know about it, is that right?

A Before I went to rent the truck we had that conversation.

Q Before you went to rent the truck you had a conversation not to tell Mr. Joyce?

A Yes.

Q He didn't want too many people to know about this, is that right?

1 A Right.

2 Q At seven o'clock you were prepared to leave the
3 Tic Toc Bar and go into Janet Terri's house; is that right?

4 A Yes.

5 Q And Mr. Walsh was there at seven o'clock; is
6 that right?

7 A Yes.

8 Q I believe you testified he had a broken leg at
9 that time?

10 A Broken ankle, yes.

11 Q He wasn't able to assist in moving the boxes?

12 A No.

13 Q Did you ask him at that time how you were going
14 to get the boxes moved from the house into the truck?

15 A You mean if we were going to have help?

16 Q Yes.

17 A He said he would have a couple of guys.

18 Q Did you then -- did you ask Mr. Freudiger to
19 help you at that point?

20 A I did not.

21 Q Did you see Mr. Walsh ask him to help?

22 A I didn't see him ask him.

23 Q Do you know of your own personal knowledge
24 whether Mr. Walsh had asked Mr. Freudiger to assist?
25

1
2 A I didn't hear a conversation to that, but he
3 would have been the only one that would ask him.

4 MR. KIMELMAN: I object and ask it be stricken.

5 THE COURT: Strike it out.

6 "I didn't hear a conversation," is the answer.

7 THE WITNESS: I didn't hear him asking anything.

8 Q Now, how soon after you stopped working at
9 seven o'clock did you leave the Tic Toc Bar?

10 A Within a few minutes.

11 Q You drove to Janet Terri's house with
12 Mr. Bovell?

13 A I did, yes.

14 Q When you arrived at Janet Terri's house,
15 Mr. Freudiger was already there; is that correct?

16 A Yes.

17 Q And after you got there, what did you do?

18 A We loaded the truck with cartons.

19 Q What part did you play in loading the truck?

20 A I was inside the truck stacking them.

21 Q Were the boxes passed to you?

22 A Yes.

23 Q You testified this took about twenty-five
24 minutes to a half-hour?

25 A Yes.

2 Q You testified that there was no conversation
3 concerning what was in the boxes; isn't that right?

4 A That's right.

5 Q Did you have any conversations at all with
6 Mr. Freudiger at that time?

7 A No.

8 Q After the boxes were loaded in the truck, you
9 then drove the truck to Island Park?

10 A Yes.

11 Q You then, after parking the truck in Island Park,
12 drove back to the Tic Toc Bar; isn't that correct?

13 A Yes.

14 Q Mr. Walsh and Mr. Freudiger accompanied you
15 when you returned to the Tic Toc Bar; isn't that right?

16 A Yes.

17 Q There was no conversation at that time as to
18 what was in the boxes; isn't that correct?

19 A That is correct.

20 Q By the way, were you paid any money to load
21 these boxes into the truck?

22 A No, I wasn't.

23 Q Did you personally pay Mr. Freudiger any money
24 to do this?

25 A No.

1 didn't think they knew about; is that right?

2 A Right.

3 Q And that is why you told them just about Joyce
4 and Burns; is that right?

5 A Yes, sir.

6 MR. KAPLAN: I'm going to object to the form
7 of these questions, your Honor.

8 THE COURT: I will allow it.

9 Q Now, on April 3, 1975, did you have a conversa-
10 tion with Thomas Burns?

11 A Yes, I did.

12 Q What did he indicate to you at that time?

13 A He indicated that the FBI had almost complete
14 knowledge of what had happened, and I discussed the thing
15 with him and I had decided that the best way for me to go would
16 be to go back and make a full statement.

17 MR. KAPLAN: Your Honor, I'm going to object
18 as far as it applies to my client, it has absolutely
19 no relevancy.

20 THE COURT: Well, no, I will allow it for purpose
21 of explaining his actions, not for the truth of any-
22 thing that Burns said to him but for the purpose of
23 explaining his actions which were questioned by you.

24 I will allow it.
25

[250]

Schoenly-redirect

Q And did in fact Tommy Burns tell you that he had made a full confession to the FBI?

MR. KAPLAN: I'm going to object to the form of the question, all he does is put words in his mouth.

THE COURT: Yes, I will sustain that.

Q In your own words, what did Tommy Burns tell you to tell the jury --

MR. KAPLAN: Your Honor, none of this is binding on my client.

THE COURT: This testimony is offered solely for the purpose of explaining why he called the FBI and asked to see them on a subsequent occasion, and according to the earlier testimony he made changes in his testimony, and this is not for the purpose of you accepting it, you may not accept what Mr. Burns said as true. This is solely offered for the purpose of explaining his actions.

Now what did he say?

A Burns had told me that he had talked -- that he had made his confession and that the best way for me and him to go would be to tell the truth.

Q And as a result of that conversation with Tommy Burns on April 3, 1975, what did you do?

A I called Mr. Sullivan and made an appointment to

Schoenly-redirect

go in and talk to him the following day.

Q And you did go in to see Mr. Sullivan then the following day; is that right?

A Yes, I did.

Q And did you tell the whole story to Agent Sullivan on April 4th?

A Yes.

Q And you have looked at a copy of the statement you made to Agent Sullivan on April 4th?

A Yes, I have.

Q And does that contain the true events of what happened?

A Yes, it does.

Q Concerning these Timex watches?

A Yes.

Q Did you tell any lies to the FBI on April 4th?

A No, no, I didn't.

Q Did you tell any lies to the Grand Jury when you testified on June 9th?

MR. KAPLAN: I'm going to object to this, if your Honor please.

THE COURT: Overruled.

A No, no.

Q Did you tell any lies to this jury today?

[252]

Schoenly-redirect

A No, sir.

MR. KAPLAN: Your Honor --

THE COURT: That is for the jury to determine,
I will sustain it.

BY MR. KIMELMAN:

Q Now, it is a fact, isn't it, that your memory
was better back in April of '75 than it is now; is that right?

A Yes, sir.

Q And it was better in June when you testified
before the Grand Jury than it is now; is that right?

A Yes.

Q Now, after reviewing your statements to the
FBI and your Grand Jury testimony, did that refresh your
memory as to what happened in March of 1975?

A Yes.

MR. KAPLAN: I'm going to object to this line
of questioning, if your Honor pleases.

THE COURT: On what grounds?

MR. KAPLAN: For the reason that the jury is
going to have to determine what the state of his
recollection, his memory, is, and the truthfulness,
and not Mr. Kimelman or the witness.

THE COURT: No, I will allow it.

Q Did it refresh your memory?

[253]

Schoenly-redirect

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A Yes, it did.

3

Q Are the statements that are contained in those

4

reports the statements that you made to the FBI at that time?

5

A Yes.

6

Q Now, when you testified in the Grand Jury about

7

the conversation that you had in the early part of June

8

involving Walsh, Terri and Joyce, you told the Grand Jury,

9

as Mr. Kaplan indicated, that Joyce told you to plead the

10

Fifth Amendment; is that right?

11

A Yes.

12

Q Did you also tell the Grand Jury at that time

13

that Janet and Donny were there?

14

A When I had talked to Joyce, yes, yes, they were

15

there.

16

Q So when you told the Grand Jury that Joyce was

17

the one who told you to plead the Fifth, at the same time,

18

as you told the Grand Jury, Walsh and Terri were there; is

19

that right?

20

A Yes.

21

MR. KAPLAN: I will object to it, if your

22

Honor pleases, all he is doing is testifying himself.

23

THE COURT: No, I will allow it.

24

Q Now, when you were interviewed by the FBI on

25

April 2nd and April 4th, did anyone make you any promises at

RECROSS EXAMINATION

BY MR. KAPLAN:

Q You told us on direct that it was the conversation with Burns that made you go and correct your former untruthful statements?

A It led to my decision.

Q And that was the conversation that took place on March 21st in the bar, is that right, on March 21st?

A Yes.

Q That was the conversation you told us took place over here (indicating on diagram on green board), near the men's room for an hour and a half; is that right?

A Well, we were there for an hour and a half, the whole conversation wasn't that.

Q But it was that conversation that you were referring to?

A Yes.

Q And which you told the FBI about falsely; is that correct?

A Yes.

Q Now, you told us, did you not, that when that conversation took place, to the best of your recollection, there was nobody else present; isn't that the fact?

A Right.

2 Q Burns certainly wasn't there, was he?

3 A No, he wasn't.

4 Q Now, you know that for a certainty that Burns
5 wasn't there?

6 A Yes.

7 Q So no matter what Burns told the FBI, he couldn't
8 tell them about what happened on March 21st over here at the
9 end of this bar, could he (indicating)?

10 A No, in no way.

11 Q He couldn't tell the FBI that you had the con-
12 versation or you didn't have the conversation.

13 MR. KIMELMAN: I'm going to object.

14 A Of course not.

15 MR. KIMELMAN: I'm going to object to what Mr.
16 Burns can testify to.

17 THE COURT: No, that is permissible.

18 BY MR. KAPLAN:

19 Q And Burns couldn't tell the FBI whether you told
20 the truth or whether you told a lie about that conversation
21 on March 21st could he?

22 A No, he couldn't.

23 Q No.

24 In fact you are telling us that you know for
25 certainty as you sit there now that Burns knew from his own

1 knowledge absolutely nothing about that conversation; isn't
2 that the fact?

3 A Yes.

4 Q And yet you are telling us that after Burns
5 told you he told everything that is what compelled you to go
6 to tell the FBI that you hadn't told the truth about this
7 conversation; is that right?

8 A Yes.

9 Q This conversation, and that Burns, as far as you
10 know, wasn't within miles of it; is that right?

11 A Right.

12 Q And that is what made you do it, go back to the
13 FBI; is that right?

14 A It helped my decision to.

15 Q It helped your decision?

16 A Right, the conversation with Burns.

17 Q And that is what you discussed with Mr. Kimelman
18 during the lunch break, that conversation with Burns?

19 A It was brought up.

20 Q Sure.

21 And you told Mr. Kimelman--

22 MR. KIMELMAN: Your Honor, again Mr. Kaplan is
23 making comment after comment.

24 MR. KAPLAN: I am sorry, I don't mean to do it,
25 Judge.

2 Q Now, that is what you talked to him about at
3 lunch; is that correct?

4 A Yes.

5 Q And after you talked to him about it at lunch,
6 you now come back and you told us that that conversation with
7 Burns was the reason you called Sullivan to recant your pre-
8 vious statement; is that correct?

9 A Not the whole reason.

10 Q Well, is there another reason?

11 A Yes, I was scared and I wanted to tell the
12 truth, to get -- you know, to try to get out of it myself.

13 Q And at what point did you get to be scared?

14 A After they took me down there, to the Federal
15 Building.

16 Q Is that the reason you lied because you were
17 scared?

18 A Yes.

19 Q That is the only reason?

20 A I -- I went over this before, I lied because I
21 didn't know what they had known, I was trying to keep -- you
22 know -- as many people out, trying to, you know, not to
23 indicate myself as much as possible.

24 Q And when you lied, did you know that you were
25 putting Joyce in trouble?

2 A Yes.

3 Q You knew you were lying him into more trouble
4 than he was in; is that the fact?

5 A Not into more trouble, no.

6 Q Into trouble?

7 A He had already been arrested.

8 Q You thought you couldn't get him into any more
9 trouble if you lied about him; is that right?

10 A Possibly.

11 Q Possibly?

12 A It's possible what I thought.

13 Q Well, what did you think?

14 A I don't know what I thought exactly almost a
15 year ago.

16 Q Do you know anybody else who knows what you
17 thought almost a year ago?

18 A I don't know of anybody that knows what they
19 thought about a year ago.

20 Q Now I want to ask you again:

21 Is the only reason you went back and told
22 Sullivan you lied to him this conversation with Burns or was
23 there another reason or a different reason?

24 A It was not the only reason.

25 Q What other reason was there?

2 A One of the reasons is I wanted to try to get
3 myself off the hook.

4 Q You thought by going back and telling Sullivan
5 you lied to him the day before you would get yourself off the
6 hook?

7 A It would help me eventually.

8 Q It would help you eventually?

9 A Right.

10 Q And when you told Sullivan that you lied to him
11 about who told you about the trust, did you tell him you lied
12 to him when you told him you didn't know anybody else involved
13 in this?

14 A I guess so because I got it all on the statement.

15 Q You said to him, Mr. Sullivan, I lied to you, I
16 lied to you about Walsh: did you tell him that?

17 A Yes.

18 Q You said that in so many words?

19 A So many words, yes.

20 Q You didn't say any of that in your April 4th
21 statement did you?

22 A When I called Mr. Sullivan on the phone on the
23 third I told him that I lied about a part of my statement and
24 I said I would like to come in and correct it.

25 Q When you talked to him on the 4th, did you see

2 him making notes?

3 A Yes, he was making notes.

4 Q He kept writing all the time, didn't he?

5 A Yes.

6 Q Did you tell him the reason you came in to
7 correct your previous lie was because Burns had told you to do
8 it or suggested that you do it?

9 A I -- no.

10 Q No.

11 You never told him that and he never asked you,
12 did he?

13 A Right, I didn't think that was important.

14 Q Did he think it was important?

15 MR. KIMELMAN: Objection, your Honor.

16 THE COURT: Will you rise when you make an
17 objection.

18 MR. KIMELMAN: I'm sorry, your Honor.

19 I object to what Agent Sullivan thought.

20 Q Did Sullivan ever say to you, Why did you lie
21 to me?

22 A Yes.

23 Q Yes.

24 What did you tell him?

25 A I told him I was scared, I was trying to keep

myself out of it.

Q You told him you were scared, you were trying to keep yourself out of it?

A Yes, right, sir.

Q That is all you told him?

A I don't know exactly what I told him.

Q Did you tell him anything else?

A I gave him my statement.

Q Was he writing when you told him all of this?

A When I gave him my statement, yes.

MR. KAPLAN: I have no further questions.

RECROSS EXAMINATION

BY MR. SPERLING:

Q Mr. Schoenly, you say and you have said a number of times that you told the truth to the Grand Jury?

A Yes, sir.

Q Mr. Schoenly, did you ever see my client, Mr. Bovell, take any money or get any money from anybody on that date when you saw him on the 21st of April -- March?

A No, I didn't.

MR. SPERLING: I have no further questions.

MR. WARBURGH: No questions.

MR. MALTESE: No questions.

MR. KIMELMAN: Just one further question, your

(At this point, Mr. Kaplan stood in the courtroom and indicated he needed a recess.)

THE COURT: Not yet.

MR. KIMELMAN: The Government calls Peter Areiter.

P E T E R A R E I T E R , called on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Areiter, how old are you?

A 28.

Q Are you married?

A Yes.

Q Where do you presently live?

A 117 New York Avenue, Long Beach.

MR. WARBURGH: Your Honor, I ask the witness to keep his voice up. I am having difficulty.

THE COURT: Keep your voice up so that all may hear you.

BY MR. KIMELMAN:

Q What is your present occupation, Mr. Areiter?

A Truckdriver.

Q And how long have you held that job?

2

[271]

242a

Areiter-direct

1

A Five weeks.

2

Q What was your occupation prior to being a truck-
driver?

4

A I was always a truckdriver.

5

Q And how long have you been a truckdriver?

6

A Approximately eight years.

7

Q Can you tell us what the extent of your

8

education is?

9

A High school.

10

Q High school graduate?

11

A Yes.

12

Q Now, Mr. Areiter, where were you on the morning

13

of March 17, 1975?

14

A In the Tic Toc, in Lynbrook.

15

Q And what is the Tic Toc?

16

A It is a bar.

17

Q And had you ever been in that bar before?

18

A Yes, I have.

19

Q And how often?

20

A Quite often.

21

Q And approximately what time did you arrive at the

22

Tic Toc Bar on March 17th?

23

A 10:00 o'clock, 10:15.

24

Q When you got to the bar, did you see anybody there?

25

3

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Areiter-direct

A Yes, I did.

2

Q Who was there?

3

A William Joyce.

4

Q And who is the bartender at that time?

5

A Bob Schoenly.

6

Q Did you have a conversation with William Joyce

7

at that time?

8

A Yes, I did. He asked me to do him a favor and

9

give his friend a ride to the airport.

10

Q By the way, do you see Mr. Joyce in the courtroom?

11

A Yes, I do.

12

Q Would you indicate where he is sitting?

13

A Sitting behind the gentleman over there

14

(indicating).

15

MR. VERDIRAMO: The identification is stipulated

16

to, your Honor.

17

BY MR. KIMELMAN:

18

Q On March 17, 1975, how long did you know

19

Mr. Joyce?

20

A About one year.

21

Q And what was your relationship with Mr. Joyce

22

at that time?

23

A Well, I knew him, you know, just to talk to him,

24

we never went out together or anything.

25

4 1 [273]

Areiter-direct

2 Q And was Mr. Joyce a regular patron of the Tic
3 Toc Bar at the time?

4 A Yes.

5 Q Now, he asked you if you would give his friend a
6 ride back to the airport; is that right?

7 A Yes.

8 Q And what did you respond?

9 A I responded yes and he threw me the keys to his
10 car.

11 Q And after he threw you the keys to his car, what
12 did you do?

13 A I walked outside, there was a person outside
14 waiting and he introduced me by his first name and I proceeded
15 to go to the airport.

16 Q And do you recall the name of that person?

17 A No, I don't.

18 Q Had you ever seen that person before?

19 A No, I hadn't.

20 Q After you were introduced, what did you do?

21 A I got in the car and we started to go to the
22 airport.

23 Q And this is Joyce's car; is that right?

24 A Yes.

25 Q And where did you go exactly?

1 A No, he did not.

2 Q Were any arrangements made as to when you were
3 supposed to move the cartons?
4

5 A That night at seven o'clock we were to meet at
6 the Tic Toc.

7 Q And on the evening of March 17, at seven o'clock,
8 did you in fact go to the Tic Toc?

9 A Yes, I did.

10 Q When you got to the Tic Toc, whom did you see
11 there?

12 A Tommy Burns, Donny Walsh and Gunner was there.

13 Q And do you see the individual whom you referred
14 to as Gunner in the courtroom?

15 A Yes.

16 Q Will you indicate where Gunner is sitting?

17 (The witness indicated the defendant Louis
18 Bovell.)

19 Q Is that Gunner?

20 A Yes, that is him.

21 Q Did you have a conversation with any of these
22 individuals at the Tic Toc at that time?

23 A No, it was just Donny asked if we were ready and
24 everybody left, we went into the car.

25 Q Where did you go?

1 A To the Arcy Paint Store.

2 Q And --

3 THE COURT: Wait a minute.

4 Who went, Burns, Walsh, Gunner and Joyce?

5 THE WITNESS: Gunner and I.

6 THE COURT: Gunner and you?

7 THE WITNESS: Yes.

8 MR. SPERLING: I can't hear.

9 THE COURT: He said that Gunner and he went.

10 What did Burns and Walsh do?

11 THE WITNESS: Walsh came into the car with me
12 and I believe we met Tommy Burns at the paint store.

13 THE WITNESS: All right.

14 BY MR. KIMELMAN:

15 Q Now, did Tommy Burns have any connection with
16 that paint store?

17 A Yes, he was employed there.

18 Q When you got to that paint store, what happened?

19 A Tommy had gotten into the truck and Donny Walsh,
20 Gunner and I had went in my car.

21 Q What kind of truck did Tommy Burns get into?

22 A Astep van.

23 Q Did it have any lettering on it or any words on
24 it?
25

1 MR. KAPLAN: Judge, as you know, I came into the
2 case very late and I have managed to clear my calendar
3 for everything except I must be in Hicksville tomorrow
4 morning.
5

6 THE COURT: For what?

7 MR. KAPLAN: Judge, I have a couple of closings
8 there that I promised I had to be at.

9 THE COURT: You are engaged on trial.

10 MR. KAPLAN: It's impossible. I have spoken to
11 Miss Terri about it and she agreed to consent on the
12 record that either Mr. Corbett or Mr. O'Brien will
13 cover me.

14 I understand from Mr. Kimelman, in any event,
15 that the bulk of the testimony that affects her has
16 already gone into the record. And the references to
17 her now will be of a rather passing nature and won't
18 be of the same effect as that of the previous witness.

19 I am just in a situation where I can't help
20 myself. I agreed late Friday afternoon to come into
21 the case Monday morning and I've gotten rid of
22 everything except this I must go to.

23 THE COURT: You can't.

24 MR. KAPLAN: She is willing to consent. I am
25 stuck. There is nothing else I can do.

1 [281] Areiter-direct 248a
2 THE COURT: The attorneys can come in here and
3 close it here.

4 MR. KAPLAN: I've got to be in a bank and the
5 bank won't come. I expect to get back by twelve
6 anyhow, or before twelve, but under the circumstances
7 as long as she is consenting I respectfully ask your
8 Honor to go along. It's an intolerable hardship on me.
9 I have no option. It's an old personal friend and I
10 promised on a stack of bibles that I would do it.

11 THE COURT: Why can't you schedule it for
12 another time?

13 MR. KAPLAN: Because he has moved out and he's
14 going to Florida the day after tomorrow.

15 THE COURT: Can't you get anybody else?

16 MR. KAPLAN: If I was able to I wouldn't ask you
17 for this. If there was anything else I could do I
18 would never ask. I would like to say --

19 THE COURT: Have you talked to Mr. Lombardo
20 before? Maybe he can close it.

21 MR. KAPLAN: Mr. Lombardo is stuck in a murder
22 trial. He is before Judge Mirabelle.

23 THE COURT: I understand. But he may be out of
24 the murder trial.

25 MR. KAPLAN: No, I know he isn't out. We are

1 members of the Grievance Committee and I have spoken to
2 him. He expects to be there a long time.

3 I have done this before and I realize it is an
4 imposition but I really have to ask your Honor's
5 indulgence since there is nothing I can do about it.
6

7 THE COURT: The one who is going to be hurt is
8 your client.

9 MR. KAPLAN: I explained the situation and she
10 has agreed to consent on the record. And since she does
11 agree --

12 THE COURT: You've got possible adverse interests

13 MR. KAPLAN: I don't have any adverse interests
14 with Mr. O'Brien, certainly. I have no adverse
15 interests of any nature with him. He is certainly
16 competent enough of a lawyer to fill in for me much
17 more so than I am.

18 THE COURT: You understand all this?

19 MISS TERRI: I understand he has to take care of
20 business and he will be back at twelve.

21 THE COURT: His first business is here. You
22 can insist he be here if you want.

23 MISS TERRI: I am willing to go with the other
24 lawyer for tomorrow morning.

25 THE COURT: It's up to you. I can force him to

1 be here if you insist upon it.

2
3 MISS TERRI: Mr. Kimelman said there would be
4 really no --

5 MR. KIMELMAN: Your Honor, I said there will be
6 testimony as to Miss Terri and Mr. Kaplan chose to
7 characterize it as cumulative testimony.

8 MR. KAPLAN: I didn't say cumulative. I under-
9 stand the testimony wouldn't be of the same substance
10 and I have explained it to her fully and I honestly in
11 my opinion wouldn't be making the application if I
12 thought I was doing something in derogation of her
13 interests. I am an experienced lawyer and I know what
14 my obligations are.

15 THE COURT: It's up to you.

16 MISS TERRI: I go by what he said.

17 MR. KAPLAN: She --

18 THE COURT: Being in the good hands of
19 Mr. O'Brien, you've got to bear in mind his first client
20 is Mr. Grimsley, not you.

21 MR. KAPLAN: I explained it to her fully.

22 MR. O'BRIEN: I would be happy to do it as an
23 accommodation to another attorney. I would only like
24 the Court to explain to the jury that that is what I am
25 doing and I am not representing Miss Terri and they are

not to construe any cross-examination I do as having any bearing upon my client. There is no community of interest between Miss Terri and my client.

THE COURT: I think both of you will have to try to let me know if you think any testimony is to be introduced that may go to Miss Terri's interest -- maybe we will have to interrupt the proceeding and hold it at that point.

MR. O'BRIEN: May I also suggest that possibly as far as this afternoon's cross, that we go out of turn and --

MR. KAPLAN: From what I've seen, I have no present plans to cross-examine this witness.

THE COURT: Let's proceed. Are you sure this is all right with you?

MISS TERRI: Yes.

THE COURT: Bear in mind I can direct him to be here and he must come.

MISS TERRI: He doesn't feel it is that necessary for tomorrow and I would just go along with their plan because they apparently know what they are doing.

THE COURT: It's your case. I don't know what is coming any more than you do and I can't advise you.

1 [285] Areiter-direct 252a
2 MR. KIMELMAN: I am going to object to this
3 unless there is a clear consent by Miss Terri on the
4 record. I am not convinced there is a clear consent at
5 this point.

6 I am not convinced whether she is convinced
7 completely and without any doubt in her mind that she
8 wishes Mr. O'Brien to represent her in Mr. Kaplan's
9 absence.

10 MISS TERRI: I consent to having Lawyer O'Brien
11 represent me for tomorrow morning.

12 THE COURT: I will take the consent.

13 MR. KAPLAN: Thank you very much.

14 MR. KAPLAN: Thank you very much. I am sorry to
15 have to do this. If there was any alternative --

16 THE COURT: I don't think you should take a case
17 under these conditions.

18 MR. KAPLAN: Judge.

19 THE COURT: You should have advised the Court
20 before the day before.

21 Bring in the jury.

22 (The jury is in the jury box.)

23 THE COURT: If this is any consolation, when I
24 looked out the window a moment ago it had stopped
25 snowing.

2 MR. VERDIRAMO: I join in Mr. O'Brien's objection

3 MR. KAPLAN: Would you give a cautionary
4 instruction that these photographs can't bind everybody?

5 THE COURT: Wait a minute. You can make your
6 motion to strike at the appropriate time.

7 MR. KAPLAN: I object.

8 THE COURT: I will take the exhibits and have
9 them marked in evidence. If they are not connected
10 to the appropriate people at the appropriate time I
11 will grant motions to strike.

12 MR. SPERLING: Your Honor, my sole objection to
13 the introduction is that there has been no foundation
14 laid for the photographs themselves.

15 Again, I say who took them, when were they taken
16 and so on?

17 THE COURT: Overruled.

18 THE CLERK: Government's Exhibits 8 and 9
19 received in evidence.

20 (So marked.)

21 MR. KIMELMAN: May I pass these exhibits to the
22 jury?

23 THE COURT: Yes.

24 MR. KIMELMAN: At the same time, may I also
25 pass Government's Exhibits 6 and 5?

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Q After all the boxes were loaded into the Arcy Paint truck, what did you do?

A I had gotten into my car with Donny Walsh, Gunner got into the Arcy Paint truck with Tommy and Don Walsh directed me to Lynbrook.

Q Where did they direct you to in Lynbrook?

A To Janet Terri's house.

Q Have you ever been to Janet Terri's house before?

A I was there once quite a while ago.

Q Did you know who Janet Terri was on March 17, 1975?

A Yes.

Q How did you know Janet Terri?

A She used to be a barmaid in the Tic Toc.

Q In March of 1975, how long had you known Janet Terri?

A About a year, a year and a half.

Q Do you see Janet Terri in the courtroom?

A Yes.

Q Is that Janet Terri seated at the counsel table (indicating)?

A Yes.

Q When you got to Janet Terri's house, what did

1
2 you do?

3 A I went inside with Donny Walsh and Tommy Burns
4 backed the Arcy paint truck into the driveway.

5 Q Where was Gunner?

6 A He was on the truck with Tommy.

7 Q Do you see Janet Terri's house on that map there
8 (indicating)?

9 A Yes.

10 Q Is that where it is indicated on Government's
11 Exhibit 1? Is that where Janet's house is?

12 A Yes.

13 Q You went in the house?

14 A Yes.

15 Q What did you do?

16 A I was inside the house and Tommy Burns and
17 Gunner were on the truck handing me packages and I was stacking
18 them in the living room.

19 Q Where was Donny Walsh at the time?

20 A Donny Walsh was standing in the living room.

21 Q Did all the boxes go into the living room?

22 A In the living room and the front porch, yes.

23 Q Do you recall approximately how many boxes were
24 involved on that night?

25 A About 100.

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Q How long did it take you to get all the boxes into the living room and the front porch of Janet's house?

A About an hour.

Q After you got the boxes, what happened? After you got the boxes into the house, what happened?

A They filled up the living room and the porch so we moved them downstairs in the basement.

Q Did you see anybody in Janet's house at that time while moving the boxes in?

A No, I did not. Donny talked to somebody, though.

Q You don't know who he talked to, is that right?

A No.

Q After all the boxes were in, what did you say happened?

A After all the boxes were downstairs we left.

Q You moved the boxes down to the basement of the house, right?

A Yes.

Q How long did that take?

A Maybe half hour.

Q That was on the evening of March 17, 1975, is that right?

A Yes.

Q The next day, March 18, 1975, did you have a

1 conversation with Bill Joyce?

2 A Yes.

3 Q Where and when did this conversation take place?

4 A It took place in the Tic Toc.

5 Q What was the conversation you had with Bill
6 Joyce the next day?

7 A That I would be taking care of removing the
8 boxes.

9 Q Did he indicate how he was going to take care
10 of you for moving the boxes?

11 A He was going to pay me.

12 Q Did he indicate how much?

13 A About \$3,000.

14 Q That was for moving the boxes?

15 A Yes.

16 Q Did he indicate to you he was going to pay
17 anybody else?

18 A Tommy Burns told me he was going to pay for
19 his wedding.

20 Q For moving the boxes you were going to get
21 3 or \$4,000 and Tommy Burns was going to have his wedding
22 paid for, is that right?

23 A Yes.

24 Q Wednesday, March 26, 1975, did you have a
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conversation with Tommy Burns?

A Yes. He asked me to give him a ride over to Lenny's house.

Q Who is Lenny?

A Also a friend of mine.

Q Do you know Lenny's last name?

A Nitti.

Q Where does he live?

A Forest Avenue in Lynbrook.

MR. KIMELMAN: Your Honor, excuse me for one second.

THE COURT: Mr. Burns asked you to give him a ride?

THE WITNESS: Yes.

Q Did you go over to Mr. Nitti's house?

A Yes.

Q Approximately when did you go over to Mr. Nitti's house?

A About 8 o'clock that night.

Q What happened when you got to Mr. Nitti's house?

A We knocked on the door and Lenny had came out and we went to the garage. The garage door blew down and I had picked it up and Lenny and Tommy were standing by a bunch of boxes.

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Q Did you recognize the boxes in Mr. Nitti's garage?

A Yes, they were the same boxes that I moved to Janet Terri's house.

Q Was there anything different about the appearance of the boxes on March 26th?

A The wrapping was off.

Q In other words, the wrapping paper and that yellow tie was no longer on the boxes, is that right?

A Yes.

Q What happened at the garage?

A Tommy had stuck his hand in the box and took 2 watches out and I had also taken 2.

Q You went in the garage and you opened up one of the boxes and took watches out?

A Yes.

Q What kind of watches did you take out of Lenny Nitti's garage on March 22nd?

A They were just the watch face with the background and they were Timex watches.

Q You took 2 Timex watches?

A Yes.

Q Tommy Burns took 2 Timex watches?

A Yes.

1
2 Q By the way, I show you what has been marked
3 Government's Exhibit 6 in evidence and ask you if you can
4 identify that photograph? .

5 A Yes, that is Janet Terri's house.

6 Q That is the house you went to on the evening
7 of March 17th, is that right?

8 A Yes.

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10 (Continued next page.)
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A Yes.

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Q Would you point that individual out?

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A Right there in the checkered pants.

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MR. MALTESE: Your Honor, I object. I would like the record to show he made this identification after he looked at the photograph.

6

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THE COURT: He may be shown the photograph. I will allow the identification.

8

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MR. KIMELMAN: May the record indicate the identification of Morton Hanan.

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THE COURT: Yes.

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MR. KIMELMAN: Your Honor, I offer Exhibit No. 10. I believe you have seen it.

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MR. KAPLAN: May I inquire if this is being offered against anybody except one defendant?

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THE COURT: I assume not, though possibly against Mr. Walsh, though I do not know.

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MR. KIMELMAN: I would be happy to give my theory, your Honor, if counsel would like to hear it.

20

21

THE COURT: You are offering it against all the defendants?

22

23

MR. O'BRIEN: I would not like to hear it now, your Honor.

24

25

THE COURT: All he has to answer is yes or no,

1
2 is he offering it as against all of the defendants?

3 MR. KIMELMAN: Your Honor, at this time we
4 are offering it as to all defendants subject to
5 connection.

6 MR. O'BRIEN: I object.

7 MR. VERDIRAMO: Objection, your Honor.

8 THE COURT: Just take a look at the picture
9 and pass it around and make sure everybody sees it.

10 MR. MALTESE: Your Honor, I am going to object
11 to the introduction of this photograph on the
12 following grounds.

13 THE COURT: Will you hold your objection and
14 let him finish his questioning of this witness and
15 then you can give me your objection afterwards.

16 BY MR.KIMELMAN:

17 Q Mr. Areiter, on March 28, 1975, did you have a
18 conversation with Donald Walsh?

19 A Yes, I did.

20 Q Where did this conversation take place?

21 A In the Tic Toc.

22 Q What was the conversation you had with Don
23 Walsh on March 28?

24 A That Tommy Burns and Billy Joyce got caught
25 and that I should keep my mouth shut.

count the indictment will be dismissed against you at the time of your sentencing?

A Yes.

Q And do you also understand the Government will bring any cooperation of yours to the attention of the sentencing judge at the time of your sentence?

A Yes.

Q Have any other promises been made to you, Mr. Areiter?

A No.

MR. KIMELMAN: I have no further questions.

THE COURT: Mr. Kaplan, do you want to ask any questions?

MR. KAPLAN: I have no cross-examination.

THE COURT: Ladies and gentlemen, we will suspend now until tomorrow morning at the usual time at 10 o'clock. Be here a quarter of and try to get started promptly. Do not discuss the case.

I hope it has not started snowing again.

(The jury left the courtroom.)

THE COURT: Do not go away, gentlemen. I will take up the question of the exhibit. Defendants will please be seated and I will talk to counsel about the exhibit.

[314]

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Pedirect</u>	<u>Recross</u>	<u>Voir Dire</u>
Robert Schoenly	78	135	245	255	101
Peter Areiter	270				

<u>Exhibits</u>	<u>For Id.</u>	<u>In Ev.</u>
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Government's

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1	Map	81	
2	Rental Agreement	92	93
3 & 4	2 Photographs	99	104
5 & 6	2 Photographs	129	130
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9	Photograph	278	290
10	Photograph	304	

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